Supreme Court, U.S.
FILED

97 . 171 JUL 25 1997

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

RICHARD DECARO,
Petitioner,

VS.

UNITED STATES OF AMERICA,
Respondent.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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130 PP

QUESTIONS PRESENTED

I.

WHETHER THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT PROHIBITS THE FEDERAL GOVERNMENT FROM RE-PROSECUTING AN ACCUSED AFTER HE HAS BEEN ACQUITTED OF THE SAME CHARGES IN STATE COURT AND THE FEDERAL PROSECUTION IS BUT AN EXTENSION OF THE STATE COURT PROSECUTION?

II.

WHETHER THE EIGHTH CIRCUIT COURT OF APPEALS VIOLATED PETITIONER'S RIGHT TO DUE PROCESS OF LAW WHEN IT AFFIRMED THE DISTRICT COURT'S REFUSAL TO SEVER HIS TRIAL FROM THAT OF HIS CO-DEFENDANT, WHERE THE DEFENSES WERE CLEARLY IRRECONCILABLE AND MUTUALLY EXCLUSIVE, AND WHERE PETITIONER WAS PROSECUTED BOTH BY THE GOVERNMENT AND BY CO-COUNSEL?

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PETITION FOR WRIT OF CERTIORARI

The Petitioner Richard DeCaro respectfully requests that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit entered on April 1, 1997, and affirmed on May 9, 1997, when the Court of Appeals denied the Petition for Rehearing.

OPINION BELOW

The opinion affirming the district court's orders denying Petitioner's motion to dismiss for violation of the Double Jeopardy clause and motion to sever trials is not yet reported at *U.S.A. v. Richard DeCaro*, ____F.3d ____ (8th Cir. 1997), but is included in the Appendix, *infra*, as Exh. H. The order denying the Petition for Rehearing was entered on May 9, 1997, and is found in the Appendix as Exh. I.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Eighth Circuit issued its opinion on April 1, 1997. Petitioner filed a timely Petition for Rehearing. Pursuant to Supreme Court Rule 13.1, the present petition for Writ of Certiorari was required to be filed within ninety days of the order denying the Petition for Rehearing. Jurisdiction of this Court is invoked under 28 U.S.C. §1254.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides in pertinent part:

> ... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb ...

The Fifth Amendment and Fourteenth Amendment to the United States Constitution provide in pertinent part:

> ... nor be deprived of life, liberty or property without due process of law ...

STATEMENT OF THE CASE

Petitioner Richard DeCaro was convicted by a federal jury of conspiracy to commit murder for hire, use of the mail to commit murder for hire, and five counts of mail fraud. He was sentenced to life. Joined in the indictment and tried along with DeCaro was Daniel Basile who was convicted of the two murder-related counts and two of the mail fraud counts. The Government's general theory of the case was that DeCaro hired Basile to kill DeCaro's wife Elizabeth, and that DeCaro planned to pay for Basile's services with proceeds from a life insurance policy on Elizabeth and an automobile insurance policy on the family's conversion van which the two defendants staged as having been stolen the month before the murder. It was further a part of the Government's case that DeCaro used the mails in either applying for or collecting on the insurance.[1]

Prior to DeCaro's federal prosecution, DeCaro had been charged and tried in Missouri state court for the murder of Elizabeth DeCaro. He had also been charged with stealing by deceit relative to the conversion van theft, but this count was severed from the murder count.[2] The prosecuting attorney sought the death penalty in the state murder case and alleged as a factor in aggravation that the murder was a "contract murder."[3] Basile was also charged in state court with Elizabeth's murder, but the two defendants were tried separately. Basile was con-

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[1]Appendix, Exh. E.

[2]Appendix, Exhs. A, B.

[3]Appendix, Exh. C.

victed and was sentenced to death. DeCaro was acquitted[4] and was released from a two-and-one-half year pre-trial detention. Within seven months, DeCaro was indicted by the federal authorities in the instant case for which he was eventually convicted.

The federal trial was essentially a duplication of the state trial; the only difference was that a federal prosecutor supplanted the local Missouri prosecutor. Otherwise, exhibits and photographs were borrowed from the state trial and the primary state law enforcement investigator from the local city police department sat at the counsel table. DeCaro moved in federal court for dismissal of the indictment on Double Jeopardy grounds.[5] Said motion was denied, and this judgment was affirmed by the United States Court of Appeals for the Eighth Circuit.[6]

At trial in federal court, DeCaro testified and claimed as his defense that he knew Basile only in passing and even then barely knew his name, and further, that he never entered into any agreement with Basile to steal the conversion van or kill Elizabeth DeCaro. Basile, on the other hand, defended the charges by asserting that he and DeCaro did indeed conspire to have Basile "steal" the van and the Blazer, but that he did not agree to nor did he in fact kill Elizabeth. Based on this adversity of defenses, DeCaro sought a severance of the trials, which motion was denied by the trial court.[7] This order was likewise part of Petitioner's appeal and was likewise affirmed by the United States Court of Appeals for the Eighth Circuit.

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[4]Appendix, Exh. D.

[5]Appendix, Exh. F.

[6]Appendix, Exh. H.

[7]Appendix, Exh. F.

DeCaro argued before the Court of Appeals that he had been prejudiced by the refusal of the trial court to grant a severance, because his defense was squarely contradicted and undermined by the defense of his co-defendant. Specifically, DeCaro testified that he knew Basile only in passing when Basile brought his car into the service station managed by DeCaro to have the car inspected. DeCaro categorically denied doing any illegal business with Basile, including contracting with him to steal DeCaro's van or blazer or contracting with him to kill DeCaro's wife.

Basile, on the other hand, while not testifying, raised the defense of "I'm a thief but not a murderer," accomplished through argument by his attorney[8] and the attorney's cross-examination of government witnesses.

On cross-examination of James Torregrosa, Tom Flynn asked him about why DeCaro said he wanted the van taken off his

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[8]Flynn stated in his opening:

Now during this period of time, Dan Basile made a mistake and that mistake was brought about by his being introduced by his brother, Craig Wells to Dan DeCaro. And we believe the evidence will show that in fact Dan DeCaro, excuse me, Rick DeCaro did in fact ask Dan Basile to steal the 1989 van. He was introduced, Dan was introduced to Rick DeCaro by Craig Wells and they did have several meetings around the area of Gold's Gym which was in close proximity to the Old Orchard Standard Station. Dan DeCaro -- excuse me, Dan Basile foolishly agreed to become involved in this scheme.

Now what was presented to him, we believe the evidence is going to show that this was presented to him as an insurance job or insurance scam concocted by DeCaro.

Ladies and gentlemen, you are going to hear evidence that Dan Basile is in fact a car thief and you will be convinced, I believe when you hear all the evidence in this case that he did in fact steal the van, but when you've heard all the evidence although you may feel that the evidence is there to convict him of mail fraud we are convinced that you will not be at all convinced that the evidence is sufficient to find that he is a murderer.

TX1-78-100.

hands; whether Torregrosa took this to mean "steal" the van; and whether DeCaro mentioned anything about insurance. TX1-139, 1-142. Flynn also took Torregrosa back over DeCaro's alleged solicitation of Torregrosa for murder. TX1-140, 1-141.

On cross-examination of Craig Wells, Basile's attorney queried Wells regarding the fact that he had "put this into motion by putting these people together." TX1-233. Flynn also asked:

> Now Mr. Wells, when you took Danny Basile to meet DeCaro on this first occasion, you knew at that point what DeCaro wanted, didn't you?
>
> and
>
> Now you also knew, didn't you Mr. Wells before you ever took Basile to meet Richard DeCaro the first time that Richard DeCaro wanted to find someone to kill his wife. You knew that didn't you?
>
> and finally
>
> And didn't you have a conversation with Iva Hanson where you told her that you knew before the very first meeting between these two that Mr. DeCaro wanted to have Elizabeth killed?

TX1-235, 1-1236.

Flynn also repeatedly went over with Wells his testimony that Basile told him after the first of the meetings with DeCaro that he didn't have to kill Elizabeth; that it was no longer a package deal; and that he would just do the job of stealing the van. TX1-240, 1-241. At one point in the colloquy, Flynn and Wells entered into the following exchange:

> Q. You asked him to get involved in what you knew to be a criminal offense?

A. That is true.

Q. In fact, he took that as being a favor to you in order to help you out?

A. I don't knew what he took it as.

Q. While you were looking to him for a favor, correct?

A. I asked him if he knew somebody who could do it, yes.

Q. And he told you, "Yeah I could do it?"

A. He said he would check.

Q. You went forward with that, right?

A. What's that?

Q. With that plan, you went forward with that. You put these two guys together, right?

A. That's correct.

Q. You did that as a favor to DeCaro I suppose, right?

A. Yes, sir.

Q. Even though you knew it was a criminal offense?

A. Yes, sir.

Q. To steal or --

A. Yes, sir.

Q. -- Defraud the insurance company?

TX1-254, 1-255.

On cross-examination of Sue Jenkins, Flynn questioned Basile's statement about the van theft being an insurance scam; about his claim that the owner had paid him $200.00; and about

the owner's statement that Basile could have whatever he wanted out of the van. TX2-72, 2-73. Flynn also elicited testimony from Jenkins, that Basile had denied to her that he was involved in the killing of Elizabeth DeCaro but said that in a weird way he might have known who did it. TX2-79.

On cross-examination of Jeff Niehaus, Flynn established that when Basile first called him he mentioned a double job, but said he wasn't going to get involved in the second part of the job. TX2-218, 2-219.

On cross-examination of Ken Robinson, Flynn and Robinson engaged in the following exchange:

Q. Mr. Robinson, you've related on direct examination that Basile told you this -- that someone had made a proposition to him to steal a van and also to -- I think the word used -- was off the guy's wife; is that right?

A. Yes.

Q. Now you had a subsequent conversation with him about that, did you not?

A. No, I - not really.

Q. Okay. Didn't he tell you a short time later that he told the guy to go to hell and that he didn't want to have anything to do with it?

A. I told him that's what he should do and he said, "Yeah, I'm just going to forget it."

Q. And you remember telling the police that a week after that conversation that Dago--that is what you called Danny, right?

A. His nickname.

Q. Called you and you asked him if he told the guy to go to hell and that he answered yes?

A. It came up in our conversation during talk about fishing.

Q. So he did tell you that he told the guy to go to hell?

A. He didn't say to go to hell, he said "Forget it."

Q. Said he wasn't going to do it, though, right?

A. I don't know. He just said he was going to forget it.

Q. He told you he was going to forget it, though, this is your answer?

A. Yes, sir.

Q. Okay. Did you--did you tell--did you give him advice on how to handle that guy; that he ought to tell him how to get, from your perspective, a cheap divorce or something like that?

A. I told him that if he was desperate for money that he should pick up aluminum cans on the side of the highway rather than get fixed up with some kind of foolish stuff like that.

Q. Do you remember telling Dan, Dago, telling him what he ought to tell the guy who said he can't afford to get a divorce?

A. I told him, "You should get away from him and tell him to go to hell."

Q. Danny should tell him to get away. You told Danny, "Just get away from the guy who wants you to get involved in something like that?"

A. Yes, sir.

TX4-267-271.

In his closing summation, Flynn rearticulated his defense, that Basile was a thief but not a murderer--a thief who had met and conspired with Richard DeCaro. Following are excerpted portions from the closing:

> You heard no evidence whatsoever that Dan Basile received anything other than one payment of $200.00 which clearly was involved with the Chevrolet van, and one payment of $250.00 was involved with the Blazer automobile.

TX8-114.

> In my opening statement, ladies and gentlemen, I forthrightly got up here and told you that Daniel Basile is a thief. Okay? I didn't, I told you that and the evidence has done nothing to prove me wrong. Daniel Basile did steal DeCaro's van and Daniel Basile did steal their Blazer. And Dan Basile did meet with Rick DeCaro and it's difficult for me to get up here after Mr. Rosenblum had told you something to the contrary, but the facts are what they are. And he's lying when he said that he didn't know Dan Basile and he is lying when he says ne never met with Dan Basile about stealing his vehicles.

TX8-117.

> Now, what did Dan Basile know or what did Craig Wells know? Craig Wells didn't know that Rick DeCaro didn't own that van. He told you that. He didn't know that at all. And you can infer that Dan Basile didn't know that. So why would Rick DeCaro want this van stolen if he wasn't going to profit from it?

Well, the reason I suggest to you, ladies and gentlemen, is became it was part of his plan to set up Dan Basile, set him up to look like he had killed Rick's wife.

TX8-121, 8-122.

You remember what I said at the time the van was stolen neither Craig nor Dan had any idea that the van wasn't owned by Rick DeCaro, that Rick DeCaro wasn't going to profit from the insurance payment that he was supposedly having this van stolen to get. So, what does that tell you? Rick DeCaro had some hidden idea about what he was doing that didn't include any insurance job, but it had a lot to do with finding a fall guy.

TX8-130.

Dan Basile agreed to do two things and that was take the van and take the Blazer. And he got paid for that. You heard evidence he got paid for it and he had paid ahead of time for doing both things. He got paid $200.00 before the van was taken and he got paid $250.00 before the Blazer was taken.

TX8-131.

Now, we don't know what happened because we weren't there, but certainly you can infer that Richard DeCaro hired someone to kill his wife, and to get that Blazer to a place where the sucker would go and pick it up, and you can infer that from the evidence that you've heard.

TX8-143.

I'm not here to tell you what you should do with respect to Rick DeCaro. He's got a good lawyer and

> you heard a good argument from him and you saw a good defense put on. I'm not going to suggest what you should or shouldn't do. I am suggesting to you that DeCaro got up there and told you some very serious lies about Dan Basile. That he didn't know him, that he never had any dealings with him. That he didn't hire him to steal his van. That he didn't hire him to steal the Blazer.

TX8-145, 8-146.

> I've told you that the evidence is there to convict him of being involved in a fraud with respect to the Blazer and with respect to the van and, of course, I expect you to do the right thing with that, and find him guilty of those two charges. But I also expect you to do the right thing and find him not guilty on Count I and Count 2 which deal with Mrs. DeCaro's murder.

TX8-147.

Notwithstanding the above evidence and argument, the Court of Appeals determined that the two defenses were not "properly characterized as antagonistic"[9] and even it they were, severance was not required because there was no danger here that the jury would infer from this conflict alone that the defendants were guilty.[10] DeCaro submits that this analysis by the Court of Appeals is so factually and legally flawed as to form a basis for a writ of certiorari.

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[9]Appendix, Exh.H, Slip Op. 9.

[10]Appendix H, Slip Op. 11.

REASONS FOR GRANTING THE WRIT

I.

THE *BARTKUS* EXCEPTION TO THE DUAL SOVEREIGNTY DOCTRINE SHOULD BE EXTENDED TO A SITUATION WHERE A PROSECUTION BY THE FEDERAL GOVERNMENT FOLLOWING AN ACQUITTAL OF THE SAME CHARGES IN STATE COURT IS BUT AN EXTENSION OF THE STATE COURT PROCEEDINGS.

In its opinion below, the Court of Appeals, relying on *Bartkus v. Illinois*, 359 U.S. 121 (1959), rejected DeCaro's claim that his reprosecution and conviction in federal court for the same murder charge of which he had been acquitted in state court, violated the Double Jeopardy Clause of the Fifth Amendment. The Court of Appeals reasoned that because DeCaro had failed to prove collusion or improper motive between the sovereignties of the state and federal governments, the holding in *Bartkus* was controlling.

DeCaro submits that it is unfair to require that an accused prove collusion between sovereignties in order to be free of the rancors of reprosecution. In most instances such collusion is not provable or indeed simply does not exist. Rather, in light of the strong and compelling dissent issued in *Bartkus* and the inherent unfairness of permitting a reprosecution where the only difference between the trials is the identity of the prosecutor, Petitioner respectfully submits that the Court should revisit its holding in *Bartkus*.

Regardless of whether it is a state prosecution which precedes a federal prosecution, or retrial by federal authorities following a state trial, the fundamental fairness questions of the Due

Process Clause come into play.[11] American jurisdiction has consistently looked upon the notion and concept of due process as fluid and responsive to the times. In *Hurtado v. California*, 110 S.Ct. 516 (1884), this Court considered due process in its historical setting, reviewed its development as a concept of Anglo-American law from the time of the Magna Carta to the adoption of the Fourteenth Amendment, and concluded that it was "intended to be a flexible concept, responsive to thought and experience - experience which is reflected in a solid body of judicial opinion, all manifesting deep convictions to be unfolded by process of 'inclusion and exclusion'." *Bartkus, supra* at 127, quoting *Davidson v. New Orleans*, 96 U.S. 97, 104 (1877). As stated in *Bartkus*, "Time and again this Court has attempted by general phrases not to define but to indicate the purport of due process and to adumbrate the continuing adjudicatory process in its application." *Id.* Fundamentally, due process acts to prohibit "those practices repugnant to the conscience of mankind." *Palko v. Connecticut*, 302 U.S. 319, 324-25 (1937).

While the Court in *Bartkus* reiterated its often - manifest opinion that due process is not offended by successive prosecutions by separate governments, it did carve out several exceptions to what has become known as the "dual sovereignty" rule: Where the second sovereign to bring the prosecution is but a "tool" of the previous authorities; or where the subsequent prosecution is but a "sham and a cover" for the prior prosecution and "thereby in essential fact" another prosecution by the same sovereign. *Bartkus, supra* at 123-24.

In his dissent, Mr. Justice Brennan pointed out the fallacy of distinguishing one prosecution from another; in reality, no

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[11]In *Bartkus*, the concern was with the reach of the Fourteenth Amendment, as the case was one of a state prosecution following an acquittal on the same charges by a federal jury. *Bartkus, supra* at 124. *Cf., State v. Lanza*, 260 U.S. 377 (1922).

reprosecution takes place autonomously of the first, but is for all intents and purposes, an extension of the work of the first government to investigate the offense. In *Bartkus*, the federal government had its hand in the State's retrial of the defendant and its imprimatur was all over the second prosecution. *Bartkus*, *supra*, at 168, J. Brennan, dissenting. The instant case was no different: The federal authorities relied on the investigative resources of the State of Missouri, basically re-trying the case that St. Charles, Missouri local law enforcement agents had put together for the State trial. Although it cannot be said that the State of Missouri, having lost its case against DeCaro, put the federal authorities up to retrying him, it was effectively the State of Missouri, in the guise of the federal government, which got a second bite of the apple. The local investigator who was instrumental in development of the state prosecution sat at the table of the Assistant U.S. Attorney[12]; the Assistant U.S. Attorney utilized the trial exhibits, including physical evidence, gathered by local law enforcement for use in the first trial. Even photographs admitted into evidence were the same. And witness for witness, the testimony was virtually the same. Referring to the facts in *Bartkus*, Justice Brennan said,

> I cannot see how there can be more complete federal participation in a state prosecution that there is in this case. I see no escape from the conclusion that this particular state trial was in actuality a second federal prosecution - a second try at Bartkus in the guise of a state prosecution.

Bartkus, *supra* at 168, J. Brennan dissenting. No more apt description could be offered concerning the trials of Richard DeCaro.

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[12]Detective Mike Miller, of the St. Charles, Missouri Police Department, was the chief investigator relied upon by both the local prosecutor and the Assistant U.S. Attorney.

Although our nation is founded and premised on the notion of dual, or two, sovereigns, neither the federal government nor the states operate independently of one another when a crime is being investigated. Sometimes agents from both sovereigns show up to process a crime scene and undertake follow-up of witnesses. More often one sovereign assumes the lead, or sole, role in the investigation, and if the case is retried later by the other sovereign, the latter borrows from and relies upon the earlier investigation.

To the extent that the dual sovereignty rule of *Bartkus* assumes truly separate governmental entities engaging in their own distinct successive trials, its reasoning is either flawed or outmoded. Consequently, a defendant should not have to prove the odious collusion or "sham" in order to come within an exception to *Bartkus*. *Bartkus* must be reconsidered in light of a situation where, as here, the federal prosecutor calls it his trial, but his trial exhibits, law enforcement witnesses, investigative agents -- indeed, the entire means and tools for prosecuting the case -- come directly out of the state court trial, indeed, out of the boxes and binders compiled by the state prosecutor in his earlier attempt at a conviction.

This reality gives new meaning to the urging of Mr. Justice Black who is his dissent in *Bartkus* said,

> The Court apparently takes the position that a second trial for the same act is somehow less offensive if one of the trials is conducted by the Federal Government and the other by a State. Looked at from the standpoint of the individual who is being prosecuted, this notion is too subtle for me to grasp. If double punishment is what is feared, it hurts no less for two "sovereigns" to inflict it than for one.

Bartkus, *supra* at 155, J. Black, dissenting.

While suggesting that the distinction between sovereigns is a dubious one in the context of multiple prosecutions, Justice Black goes on to say that justifying reprosecution in the name of federalism "is a misuse and desecration of the concept." *Id.* The time has come to set aside the notion that the criminal justice systems of the respective states and the federal government operate as islands unto themselves, justifying the rule that they each have the right to vindicate identical law violators. As Justice Black stated,

> Ultimately, the Court's reliance on federalism amounts to no more than the notion that, somehow, one act becomes two because two jurisdictions are involved. Hawkins, in his Pleas to the Crown, long ago disposed of a similar contention made to justify two trials for the same offense by different counties as "a mere fiction or construction of law which shall hardly take place against a maxim made in favor of life." It was discarded as a dangerous fiction then, it should be discarded as a dangerous fiction now.

Bartkus, supra at 158, J. Black, dissenting.

The Court of Appeals erred in affirming the district court's denial of a dismissal for Double Jeopardy. Petitioner respectfully requests that a writ of certiorari should issue.

II.

EVEN UNDER THE EXACTING STANDARD OF *ZAFIRO v. U.S.*, 506 U.S. 534 (1993), A SEVERANCE OF TRIALS SHOULD HAVE BEEN GRANTED BECAUSE THE DEFENSES WERE ANTAGONISTIC TO THE POINT OF PREVENTING A RELIABLE JUDGMENT ON GUILT OR INNOCENCE.

In *Zafiro v. United States*, 506 U.S. 534 (1993), the Court restated its preference for joint trials and re-established that in

most cases trials will not be severed. It also rejected a request to adopt a "bright-line rule" for severance, and Petitioner will not ask the Court here to revisit that issue. However, to the extent that this Court has injected criteria into the determination of the quantum or type of prejudice sufficient to mandate severance, Petitioner submits that the Court of Appeals for the Eighth Circuit ignored those criteria in affirming that DeCaro be tried jointly with his co-defendant.

In *Zafiro*, this Court stated, "A district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, *or prevent the jury from making a reliable judgment about guilt or innocence*." *Zafiro*, *supra* at 539, emphasis added. This rule or recommendation is in the disjunctive, and while the former portion of the rule is narrow in scope (pertaining, for instance, to the use of a particular piece of evidence at trial and its effect on the non-proponent or non-declarant), the latter clause is surprisingly broad.

Mr. Justice Stephens, in his concurrence, was not so eager to reject a bright-line rule out-of-hand, and stated that he left "for another day" the evaluation of prejudice arising when the evidence or testimony offered by one defendant is truly irreconcilable with the innocence of a co-defendant. *Zafiro*, *supra* at 543, J. Stevens concurring. Petitioner submits that that day has arrived, as Basile's defense was mutually antagonistic to and irreconcilable with, Petitioner's defense at trial, resulting in prejudice which impeded any rational or impartial determination of guilt or innocence by the jury.

The various circuits are in step with the Supreme Court, that mere blame-shifting or finger-pointing will not mandate a severance. Nor is the argument advanced by the claim that severance will improve the odds of acquittal. *See*, *Zafiro*, *supra* at 540; *U.S. v. Bordeaux*, 84 F.3d 1544 (8th Cir. 1996). On the other

hand, the circuits generally agree that irreconcilable defenses is a ground for severance, if the irreconcilability itself would compel the jury to convict, or in other words, "prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro*, *supra* at 539. Petitioner submits that such was the case below, and that the Court of Appeals erred in affirming the order denying severance.

To determine whether defenses are irreconcilable, "the test is whether the defenses so conflict that the jury, in order to believe the core of one defense must necessarily disbelieve the core of the other." *U.S. v. Jones*, 880 F.2d 55, 63 (8th Cir. 1989). In other words, a defendant has demonstrated prejudice from the denial of his severance motion if the jury was put in a position where "it must have disbelieved one defense in order to accept another." *U.S. v. Johnson*, 944 F.2d 396, 402 (8th Cir. 1991), *re'hg denied* (1991).

This rule has been consistently embraced in other circuits. A basis for severance is shown where "the defendants present conflicting and irreconcilable defenses and there is a danger that the jury will unjustifiably infer that this conflict alone demonstrates that both are guilty." *U.S. v. Haldeman*, 539 F.2d 31, 71 (D.C. Cir. 1976), *cert. denied* (1977). "To warrant a severance, in short, the accounts of co-defendants must be 'on a collision course.'" *Haldeman*, *Id.*, quoting *U.S. v. Bolden*, 514 F.2d 1301, 1310 (D.C. Cir. 1975). According to the Tenth Circuit,

> To sustain a claim of error [for improper denial of severance motion] a defendant must make a factual demonstration, not an abstract allegation, that the acceptance of one party's defense would tend to preclude the acquittal of the other or that conversely, such a showing would seemingly require that the guilt of one defendant tends to establish the innocence of the other.

U.S. v Smith, 788 F.2d 663 (10th Cir. 1986). And in the Second Circuit, the test is whether the defenses are so irreconcilable as to be mutually exclusive.

> [The defendant] must demonstrate that to accept one defense means that out of necessity the jury must convict the other defendants. Conflict to such a degree could implicitly render the trial unfair. Alternatively, a fair trial may also be denied if a jury is unjustifiably led to infer from the existence of a conflict alone that all of the defendants are guilty.

U.S. v. Cardascia, 951 F.2d 474, 484 (2nd Cir. 1991). *See also*, *U.S. v. Pacheco*, 794 F.2d 7, 9 (1st Cir. 1986) (to require severance, antagonism must go beyond mere fingerpointing into the realm of fundamental disagreement over core and basic facts).

Several cases in point demonstrate defenses "so antagonistic as to be irreconcilable or mutually exclusive." *U.S. v. Berkowitz*, 662 F.2d 1127, 1134 (5th Cir. 1981).

In *U.S. v. Rucker*, 915 F.2d 1511 (11th Cir. 1990), both defendants were riding in an automobile where contraband was discovered on a traffic stop. One of the defendants owned the vehicle and both disclaimed any knowledge of the contraband which was found literally under foot in the car's interior. In reversing the trial court on a finding of actual prejudice, the appellate court stated, "No reasonable juror could believe both of their stories, for to do so would mean that the contraband had been placed there by some unknown third party and that neither defendant had thought to investigate this mysterious parcel." *Rucker*, *supra* at 513. The court went on to hold,

> The unlikely juxtaposition of the co-defendants' protestations of innocence would make each defendant "the government's best witness against the other." *U.S. v.*

> *Crawford*, 581 F.2d 489, 492 (5th Cir. 1978). This case presents an example of a situation where two defendants' stories logically conflict to the point "that the jury will unjustifiably infer that this conflict alone demonstrates that both are guilty." *U.S. v. Eastwood*, 489 F.2d 818, 822 n.5 (5th Cir. 1973).

Rucker, Id.

In *U.S. v. Romanello*, 726 F.2d 173 (5th Cir. 1984), the inherent conflict at the core of the respective defenses compelled the same result. Vertucci, an employee of Air France, worked at the custom's area of the Houston airport and received from Farneda and Loughlin, suitcases containing gold chains, which Farneda and Loughlin had brought in from Italy and wanted stored by Vertucci until they left for Mexico the next day. Later that night Vertucci removed the bags and drove off with them. His argument at trial was that he was merely transferring the bags to another terminal from which Farneda and Loughlin intended to depart the next day. Later that night, Vertucci was found handcuffed to a light pole by a homeowner's driveway. Vertucci told authorities he had been robbed of the suitcases by a man who accosted him at gunpoint while he was loading them into a van at the Air France terminal, and that the man was joined by a second man, and both men then drove Vertucci to the light pole to which he was tethered and then abandoned. Vertucci gave descriptions of the men, and two days later police stopped Mendez and Romanello in their car and discovered the suitcases of gold chains.

Vertucci, Romanello and Mendez were each indicted, and the government charged that all three men participated in a conspiracy to steal the jewelry, with Vertucci's story contrived to throw police off the track.

Vertucci persisted in his defense at trial, that he was the victim of robbery and kidnapping and had nothing to do with the theft.

He did not, however, take the witness stand and specifically point the finger at his co-defendants. He let his attorney do the fingerpointing, who, in cross-examination and in opening and closing statements, repeatedly exhorted the jury that Romanello and Mendez robbed and kidnapped Vertucci. Mendez and Romanello, for their part, maintained at trial that they had not stolen the gold but had innocently accepted a job to drive it to New York, unaware that it was stolen. They also claimed that Vertucci's story was a lie invented by the real gold smugglers with whom Vertucci was in cahoots.

The trial court denied the defendants' motions for severance, citing as factors that "neither camp's defense requires the jury to find the other guilty" and Vertucci's failure to take the witness stand and specifically "point the finger" at his co-defendants. *Romanello*, *supra* at 176. The appellate court reversed, stating,

> We hold that the core of Vertucci's defense at trial was sufficiently antagonistic to the core of the defenses of Romanello and Mendez ... If the jury believed that Romanello and Mendez robbed Vertucci, then it could not believe that they were innocent shippers. On the other hand, if the jury believed their defense, then they could not have robbed Vertucci, and his defense would cave in.

Romanello, *supra* at 177.

In concluding as it did, the appellate court further reasoned that "it is not necessary for each defendant to base the core of his defense on the direct accusation of his co-defendant." *Id.* Severance may be required if only one defendant accuses the other, and the other denies any involvement. *Id.* Moreover, severance will lie even where one defendant has not taken the witness stand to directly accuse his co-defendant. An "accusation by counsel [which] states the core of his client's defense and casts blame on the co-defendant" is sufficient for severance. *Romanello*, *supra* at 178. Stated the court,

> To reach a different conclusion would put defendants like Romanello and Mendez in an impossible position. They would suffer compelling prejudice because of the accusation by a co-defendant's lawyer, but their hope for severance would be dashed because their co-defendant refused to testify.

Romanello, supra at 179.

U.S. v. Johnson, 478 F.2d 1129 (5th Cir. 1973) is another case in point. There, both defendants were charged with passing counterfeit notes. Smith maintained that he passed them, but claimed that he did not know they were counterfeit. He also implicated Johnson in his confession, when he stated that Johnson was not only with him when the notes were passed to a third person, White, but that Johnson was the procurer and original possessor of the notes. Johnson, on the other hand, denied being present when the crime was committed, and his defense depended on an absence of convincing identification testimony.

At trial Smith's attorney emphasized in his opening statement that Smith was an informer for the government who was helping to set up Johnson, the real purveyor of the counterfeit. He commented that Johnson was present at the scene and was the one who brought the bogus money to Smith. Indeed, according to the appellate court, "Smith's attorney implicated Johnson at every opportunity." *Johnson*, at 1133. In effect, said the court, "Smith was the government's best witness against Johnson." *Id.*

The court of appeals reversed the trial court's denial of Johnson's severance motion. It cited the fact that, "while Smith would not be highly prejudiced in the presentation of his defense by Johnson's presence at the trial, Smith's presence would cause definite hardship to Johnson's as he endeavored to prove that he played no part in the crime and was not present when it was

committed." *Johnson*, *supra* at 1132. It also reasoned that Smith's defense had so inextricably connected Johnson to the illegal activity "that the jury could hardly have been expected to return a verdict of guilty against one and of not guilty as to the other." *Johnson*, *Id.*, citing *Schaffer v. U.S.*, 221 F.2d 17, 19 (5th Cir. 1955). It emphasized as well the purpose of Rule 14, which is to prevent a situation in which each defendant is the government's best witness against the other. *See*, *U.S. v. Crawford*, 581 F.2d 489, 492 (5th Cir. 1978) ("Perhaps the primary danger against which the rule is designed to guard is that of a defendant having to face what amounts to two prosecutors - the State and his co-defendant.") *Accord*, *U.S. v. Lee*, 744 F.2d 1124, 1126 (5th Cir. 1984) (The question is whether co-defendant's counsel can "be cast in the role of the second prosecutor" whose examination of witnesses is directed not toward establishing his own client's innocence but toward damning the defendant.) Finally, the court held that, because there were only two defendants at issue, "it would not have been very time consuming, but entirely practicable, to have accorded them separate trials." *Johnson*, *supra* at 1133; *U.S. v. Harris*, 458 F.2d 670, 673 (5th Cir. 1972).

Notwithstanding the above precedent, the Court of Appeals for the Eighth Circuit rejected DeCaro's severance claim, citing as reasons, the fact that "DeCaro made no concerted effort to depict Basile as perpetrator of the crimes with which DeCaro himself was charged, to the exclusion of all possible suspects." Appendix, Exh. H, Slip Op. 10. The Court of Appeals further stated, "Any conflict in the evidence presented at this trial does nothing of the kind [to imply that the conflict alone demonstrates that both are guilty], but simply is indicative at most that each defendant was attempting to save his own skin by directing the jury's attention to the other." Appendix, Exh. H, Slip Op. 11. Both arguments of the Court of Appeals are factually flawed and more importantly, suggest a standard of proof of prejudice that is unreasonable and in some instances, unattainable.

If the Court of Appeals is suggesting that, in order to sustain a motion for severance, a defendant must "depict his co-defendant "as the perpetrator of the crimes with which [he] himself was charged," Appendix, Exh. H, Slip Op. 10, then it is fashioning a rule that excludes from severance, all defendants who are truly innocent and *simply have no knowledge* as to whom it was who in fact committed the crime. In effect this asks an accused to identify the culprit when it is not his job to do so. Moreover, if the defendant is not himself involved in the scheme or web of the criminal activity, he can presumably have no basis for knowing the answer to this riddle. This was DeCaro's position at trial, and perhaps, under the reasoning of the appellate court, his undoing. He testified that he didn't contract to have his wife killed. He testified that he didn't know who killed her and he stated that he did not know Dan Basile. His ignorance is no reason to deny a severance; moreover, it was this very ignorance of Dan Basile which collided head-on and diametrically, with Basile's claim that the two were partners in crime.

In the same opinion wherein it suggests that DeCaro had no basis for a severance because he failed to point the finger at Basile as the perpetrator of the crimes, the Court of Appeals states that severance was not called for, because all DeCaro was doing was pointing the finger at Basile, and the case was simply one where each defendant "was attempting to save his own skin by diverting the jury's attention to the other." Appendix, Exh. H, Slip Op. 11. This statement is inconsistent with the Court's earlier admonition that DeCaro had failed to name the killer; it is also factually incorrect as DeCaro was without the means or information to divert the jury's attention to Basile. More importantly, the appellate court's conclusion that the conflict itself posed no danger of demonstrating guilt, is unsupported by the facts of the case.

Certainly, the defenses presented by DeCaro and Basile at trial were no less irreconcilable than those cited in the foregoing

cases. DeCaro's defense was to deny that he had engaged in any type of agreement with Basile to do an illegal act. Basile's defense, as played out through his counsel at every possible juncture, was to admit that he conspired with DeCaro to steal the van but to deny that the two entered into a conspiracy to murder DeCaro's wife. Obviously, Basile hoped he could concede the smaller agreement without it implying the larger agreement. Unfortunately, the obvious effect--and in this case the actual effect--was that any concession by Basile to entering into an illegal agreement with DeCaro would result in a determination that the two plotted both parts of the crime. With Basile informing the jury that he knew, met with and indeed conspired with Richard DeCaro, DeCaro was hard-pressed to sell his defense--that he had never agreed with Basile to do *anything* illegal, and that in fact he barely knew him. The jury could not believe DeCaro if they first believed Basile--and how could they not believe a defendant who was admitting to criminal behavior? The defenses were on a "collision course," mutually exclusive and antagonistic. Indeed, DeCaro was squeezed from both sides by two prosecutors--the Assistant U.S. Attorney who argued that DeCaro conspired with Basile to steal the van and the Blazer and commit the murder, and Basile's counsel who argued that DeCaro conspired with Basile to steal the van and the Blazer.

It was uncontroverted at trial that Dan Basile was caught red-handed with the Blazer stolen at the time of the murder and was observed to actually steal and burn the conversion van. TX3-142, 3-167, 4-23, 2-20, 2-17. Evidence was also presented that he was in possession of a gun just prior to March 6, 1992, and that he was looking for gloves the day before. TX4-68, 2-30. Moreover, numerous statements were introduced that Basile said he had "done a lady" and that something had gone wrong with the job. TX3-169-4-73, 2210. Unquestionably, the Government had a strong direct and circumstantial case against Basile for the murder of Elizabeth DeCaro. Under the circum-

stances, DeCaro's only viable defense was to distance himself as completely as he could from Dan Basile. DeCaro endeavored to do this by introducing statements he made to an attorney and a neighbor, that he did not know Dan Basile. TX6-119, 5-90. He reinforced this by his own testimony. TX7-22. He called witnesses to testify that his office lacked privacy, TX2-153, 5229; that he was never seen to surreptitiously engage in conversation with Basile, TX2-155, 5-236; and that indeed no one really knew Basile who just sort of hung around the station the previous spring and called Craig Wells his brother. TX1-172, 1-173, 2-155.

Any attempt by DeCaro, however, to establish that he never conspired with Basile was contradicted by Basile's concession at trial that he accepted money from DeCaro to steal the van and Blazer. At every opportunity, Basile's attorney drove home his point--that Basile was a thief, solicited and paid by Richard DeCaro, but not a murderer. Flynn consistently cross-examined the Government's witness with the defense in mind; he established that Basile had spoken of a "double job" but had opted not to do the second one. TX1-240, 2-218, 4-267. And what he didn't elicit on cross-examination he underscored in closing: He told the jury DeCaro met with Basile, 8-117, 8-145; paid him to take the vehicles, TX8-114, 8-131; and lied in his testimony when he denied conspiring with Basile. TX8-143. Severance must be granted "if the essence of one defendant's defense is contradicted by a co-defendant's defense [and] the latter defense can be said to 'preempt' the former." *U.S. v. Berkowitz*, *supra* at 1134. Basile's attorney undermined the whole of DeCaro's defense. He prosecuted DeCaro no less than did the Government. In the face of this dual assault, any claim by DeCaro that he knew Basile only in passing was destined to fall on deaf ears. "The standard for mutual exclusivity is that: the essence or core of the defenses must be in conflict such that the jury, in order to believe the core of one defense, must necessarily disbelieve the

core of the other." *U.S. v. Lee*, 744 F.2d 1124, 1126 (5th Cir. 1984). The case below met this test, for to believe Basile that he and DeCaro conspired together necessitated disbelieving DeCaro when he said they never met.

By any standard, DeCaro showed real prejudice in the joinder of his trial with Basile's. Justice Stephens anticipated the day when "the evidence or testimony offered by one defendant is truly irreconcilable with the innocence of a co-defendant," and when "mutually exclusive defenses transform a trial into 'more of a contest between defendants than between the people and the defendants.'" *Zafiro, supra* at 543, J. Stephens, concurring, quoting *People v. Braune*, 363 Ill. 551, 557, 2 N.E.2d 839, 842 (1936). Under the circumstances, and particularly in light of the verdict of acquittal in *State of Missouri v. Richard DeCaro*, the jury's assessment of Petitioner's guilt was not and could not be a reliable one.

CONCLUSION

Petitioner respectfully requests that the petition for writ of certiorari be granted and the judgment of the United States Court of Appeals for the Eighth Circuit be reversed.

Respectfully submitted,
WITTNER, POGER, ROSENBLUM,
KESSLER, SPEWAK & MAYLACK,
P.C.

N. Scott Rosenblum, #4206
7700 Bonhomme, Suite 400
Clayton, Missouri 63105
(314) 862-3535/Facsimile 862-5741

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25 day of July, 1997, three true and correct copies of the foregoing have been served by mail, postage prepaid, to Thomas Dittmeier and Howard Marcus, Assistant U.S. Attorneys, 1114 Market Street, St. Louis, Missouri 63101.

APPENDIX

APPENDIX A

EXHIBIT A

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI ASSOCIATE JUDGE DIVISION

INFORMATION

STATE OF MISSOURI
COUNTY OF ST. CHARLES } ss.

CIRCUIT COURT NO. CR192-650FX

STATE OF MISSOURI

against

RICHARD DECARO
and
DANIEL ANTHONY BASILE

MURDER FIRST DEGREE
COUNT I & III
STEALING BY DECEIT
COUNT II & IV

COUNT I.

The Prosecuting Attorney for the County of St. Charles, State of Missouri, charges that the defendant RICHARD DECARO in violation of Sections 565.020.1, 562.036 and 562.041 RSMo., committed the class A felony of murder in the first degree punishable upon conviction under Sections 565.020.2 RSMo., in that on or about the 6th day of March, 1992, in the County of St. Charles, State of Missouri, the defendant, acting in concert with another, after deliberation, knowingly killed Elizabeth A. Decaro by shooting her.

COUNT II.

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant RICHARD DECARO in violation of Section(s) 570.030, 562.036 and 562.041 RSMo., committed the class C felony of stealing by deceit punishable upon conviction under Section(s) 58.011.1(3) and 560.011 RSMo., in that between February 8, 1992, and February 28, 1992, in the County of St. Charles, State of Missouri, the defendant, acting in concert with another, appropriated U. S. currency of a value of at least one hundred fifty dollars, which said property was owned by or in the possession of Allstate Insurance Company, and defendant, acting in concert with another, appropriated such property from Allstate Insurance Company and with the purpose to deprive it thereof by deceit in that the defendant, acting in concert with another, represented that a 1989 GMC white conversion van was stolen on February 8, 1992, from a driveway at #12 Hidden Meadow Court in St. Charles, which representation defendant and another knew was untrue and upon which Allstate Insurance Company relied in giving defendant and another U. S. currency.

COUNT III.

The Prosecuting Attorney for the County of St. Charles, State of Missouri, charges that the defendant DANIEL ANTHONY BASILE in violation of Sections 565.020.1, 562.036 and 562.041 RSMo., committed the class A felony of murder in the first degree punishable upon conviction under Sections 565.020.2 RSMo., in that on or about the 6th day of March, 1992, in the County of St. Charles, State of Missouri, the defendant, acting in concert with another, after deliberation, knowingly killed Elizabeth A. Decaro by shooting her.

COUNT IV.

The Prosecuting Attorney of the County of St. Charles, State

of Missouri, charges that the defendant DANIEL ANTHONY BASILE in violation of Section(s) 570.030, 562.036 and 562.041 RSMo., committed the class C felony of stealing by deceit punishable upon conviction under Section(s) 58.011.1(3) and 560.011 RSMo., in that between February 8, 1992, and February 28, 1992, in the County of St. Charles, State of Missouri, the defendant acting in concert with another, appropriated U. S. currency of a value of at least one hundred fifty dollars, which said property was owned by or in the possession of Allstate Insurance Company, and defendant, acting in concert with another, appropriated such property from Allstate Insurance Company and with the purpose to deprive it thereof by deceit in that the defendant, acting in concert with another, represented that a 1989 GMC white conversion van was stolen on February 8, 1992, from a driveway at #12 Hidden Meadow Court in St. Charles, which representation defendant and another knew was untrue and upon which Allstate Insurance Company relied in giving defendant and another U. S. currency.

/s/ Timothy Braun
Prosecuting Attorney of the County
of St. Charles, State of Missouri

BY: /s/ Ross W. Buehler
Assistant Prosecuting Attorney
Missouri Bar No. 36168

Ross W. Buehler, Assistant Prosecuting Attorney of the County of St. Charles, State of Missouri, being duly sworn, upon oath, says that the facts stated in the above document are true, according to his best information, knowledge and belief.

/s/ Ross W. Buehler
Assistant Prosecuting Attorney

Sworn and subscribed before me this 8 day of June, 1992.

/s/ Susan E. Brown
Clerk of the Circuit Court
of the County of St. Charles, Missouri

BY: /s/ Stacy Phillips
Deputy Clerk

WITNESSES:

Dr. Mary Case, 3556 Caroline, Rm. C-305, St. Louis, MO 63104
Joan Lucas, Custodian of Records, Allstate Insurance Co., P.O. Box 7110, St. Louis, MO 63177
Melanie Enkelman, 205 N. Second Street, St. Charles, MO 63301
James Torregrossa, 205 N. Second Street, St. Charles, MO 63301
Sue Jenkins, 1359 Kael, Florissant, MO
Craig Wells, 695 Chancellor, Fenton, MO
Doug Meyer, 2801 Corral, Arnold, MO
Mary Jackson, 205 N. Second Street, St. Charles, MO 63301
Elizabeth Burrows, 205 N. Second Street, St. Charles, MO 63301
Lt. Patrick McCarrick, St. Charles Police Dept., St. Charles, MO
Det. Michael Miller, St. Charles Police Dept., St. Charles, MO
Detective Arnold, St. Charles Police Dept., St. Charles, MO
Officer Vic Muschler, St. Charles Police Dept., St. Charles, MO
Detective Koeller, Chesterfield Police Dept., Chesterfield, MO
Detective Robert Frame, St. Charles Police Dept., St. Charles, MO
Deputy Joann Wright, Sheriff's Dept., St. Charles, MO
Officer P. Keyton, St. Charles Police Dept., St. Charles, MO
Sgt. Rick Leutkenhaus, Sheriff's Dept., St. Charles, MO
Ralph Vitello, 21 N. Bemiston, Clayton, MO 63105

APPENDIX B

EXHIBIT B

IN THE CIRCUIT COURT IN AND FOR ST. CHARLES COUNTY, MISSOURI

Cause no. CR192-650FX-1

CIRCUIT JUDGE DIVISION

STATE OF MISSOURI,
Plaintiff,
vs.
RICHARD DECARO,
Defendant.

AMENDED INFORMATION

[Filed: June14, 1994]

COUNT I

The Prosecuting Attorney for the County of St. Charles, State of Missouri, charges that the defendant RICHARD DECARO, in violation of Sections 565.020.1, 562.036 & 562.041 RSMo., committed the class A felony of murder in the first degree, punishable upon conviction under Sections 565.020.2 RSMo., in that on or about the 6th day of March, 1992, in the County of St. Charles, State of Missouri, the defendant, acting in concert with another, after deliberation, knowingly caused the death of Elizabeth A. Decaro by hiring Daniel Anthony Basile to shoot her.

COUNT II

The Prosecuting Attorney of the County of St. Charles, State of Missouri, charges that the defendant RICHARD DECARO, in violation of Sections 570.030, 562.036 & 562.041 RSMo., committed the class C felony of stealing by deceit, punishable

upon conviction under Sections 558.011.1(3) & 560.011 RSMo., in that between February 8, 1992 and February 28, 1992, in the County of St. Charles, State of Missouri, the defendant, acting in concert with another, appropriated U.S. Currency of a value of at least one hundred fifty dollars, which said property was owned by or in the possession of Allstate Insurance Company, and the defendant, acting in concert with another, appropriated such property from Allstate Insurance Company and with the purpose to deprive it thereof by deceit, in that the defendant, acting in concert with another, represented that a 1989 GMC white conversion van was stolen on February 8, 1992 from a driveway at #12 Hidden Meadow Court in St. Charles, which representation defendant and another knew was untrue and upon which Allstate Insurance Company relied in giving defendant and another U.S. Currency.

TIMOTHY A. BRAUN
PROSECUTING ATTORNEY OF
ST. CHARLES COUNTY,
MISSOURI
BY: /s/ James G. Gregory
JAMES G. GREGORY
ASSISTANT PROSECUTING ATTORNEY
MISSOURI BAR #22295
Filed June 14, 1994
Susan E. Brown
Circuit Clerk
St. Charles County

JAMES G. GREGORY, Assistant Prosecuting Attorney of the County of St. Charles, State of Missouri, being first duly sworn, upon his official oath, deposes and states that the facts stated in the foregoing Amended Information are true according

to his best knowledge, information and belief.

/s/ James G. Gregory
James G. Gregory
Assistant Prosecuting Attorney
as aforesaid

SUBSCRIBED & SWORN TO before me this ____ day of June, 1994.

SUSAN E. BROWN, CIRCUIT CLERK
OF ST. CHARLES COUNTY, MO

(SEAL)

BY: DEPUTY CLERK

Pam Hanley, 300 No. Second St., St. Charles, MO
Iva Hansen, 300 No. Second St., St. Charles, MO
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Sue Jenkins, 300 No. Second St., St. Charles, MO
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Michael Koenig, 1023 Beso Ct., Fenton, MO
Rene Krawczyk 300 No. Second St., St. Charles, MO
Cecil Kruep, 2072 Willow Trail, St. Charles, MO
Jenny McKay, 2041 Willow Trail, St. Charles, MO
Rick Mercante, 300 No. Second St., St. Charles, MO
Doug Meyer, 300 No. Second St., St. Charles, MO
Michelle Moore, 6 Hidden Meadow Ct., St. Charles, MO
Robert Moore, 6 Hidden Meadow Ct., St. Charles, MO
Sandra Moore, 6 Hidden Meadow Ct., St. Charles, MO

Jeffrey Niehaus, 300 No. Second St., St. Charles, MO
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Mary Reinhold, 4634 Sienna Hills Pl., St. Louis, MO
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Richard Robinson, 628 January, Ferguson, MO
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Craig Wells, 300 No. Second St., St. Charles, MO
Dennis Wayne Williams, 1418 Parklane Rd., DeSoto, MO

Witnesses:
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Vince Cowdry, 5 Stone Falcon Ct., Lake St. Louis, MO
Det. Mark Ehrhard, St. Charles City Police Dept., St. Charles, MO
Robert Frame, 19517 Encino Crown, San Antonio, TX
Det. Michael Harvey, St. Charles City Police Dept., St. Charles, MO
Officer P. Keyton, St. Charles City Police Dept., St. Charles, MO
Det. Gary Koeller, Chesterfield Police Dept., Chesterfield, MO
Sgt. Rick Leutkenhaus, St. Charles County Sheriff's Dept., St. Charles, MO
Mary Magrew, St. Charles City Police Dept., St. Charles, MO
Lt. Patrick McCarrick, St. Charles City Police Dept., St. Charles, MO
Det. Michael Miller, St. Charles City Police Dept., St. Charles, MO
Officer Vin Muschler, St. Charles City Police Dept, St. Charles, MO

Det. Richard Plummer, St. Charles City Police Dept., St. Charles, MO
Det. Ellen Richter, Maplewood Police Dept., St. Louis, MO
Det. Sgt. G. R. Schwendemann, St. Charles City Police Dept., St. Charles, MO
Det. Donald Thurman, St. Charles City Police Dept., St. Charles, MO
Det. Ken Wallingsford, Normandy Police Dept., St. Louis, MO
Dr. Mary Case, 3556 Caroline, Room C-305, St. Louis, MO
Thomas Buel, Missouri State Highway Patrol Crime Laboratory, Jefferson City, MO
Robert Jacobsen, Div. of Fire Safety, PO Box 581, Jefferson City, MO
Joan Lucas, Custodian of Records, Allstate Insurance Co., PO Box 7110, St. Louis, MO
Custodian of Records, Barnes Hospital, St. Peters, St. Peters, MO
Custodian of Records, Jefferson City Correctional Center, Jefferson City, MO
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Deborah Brennan, 2042 Autumn Wood, St. Charles, MO
Gerald Brennan, 2042 Autumn Wood, St. Charles, MO
Richard Borak, 10184 Count Dr., St. Louis, MO
Elizabeth Burrows, 300 No. Second St., St. Charles, MO
Robert Burress, 1751 Hawkins Rd., Fenton, MO
Christina Byrd, 10921 St. Francis, St. Ann, MO
Lisa Marie Carr, 300 No. Second St., St. Charles, MO
Richard Cedeck, 11 St. Charles Pl., St. Louis, MO
Jeanine Cinco, 4 Hidden Meadow, St. Charles, MO
Julie Cinco, 4 Hidden Meadow, St. Charles, MO

Jodie DeCaro, 300 No. Second St., St. Charles, MO
Richard DeCaro, Jr., 300 No. Second St., St. Charles, MO
Bruce Dike, 2050 Autumn Wood, St. Charles, MO
Melanie Enklemann, 300 No. Second St., St. Charles, MO
Debra Fields, Rt. 2, Box 244, Eldon, MO
Virgil Edward Gibson, Gaslight Gundaker Realtors, Stone Crest Mall, Osage Beach, MO

APPENDIX C

EXHIBIT C

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY
STATE OF MISSOURI

Cause No. CR192-650FX-1
Division No. 1

STATE OF MISSOURI,
Plaintiff,
vs.
RICHARD DECARO,
Defendant.

STATE'S AMENDED NOTICE TO SEEK THE DEATH PENALTY, NOTICE OF STATUTORY AGGRAVATING CIRCUMSTANCES, NONSTATUTORY AGGRAVATING CIRCUMSTANCES, DISCLOSURE OF WITNESSES TO BE CALLED, AND EVIDENCE TO BE INTRODUCED DURING THE SECOND STAGE OF TRIAL.

[filed: Aug. 19, 1994]

COMES NOW, Timothy Braun, Prosecuting Attorney for St. Charles County, attorney for the State of Missouri, pursuant to Missouri Revised Statutes, Section No. 565.005 (1986), to notify the defense once again of the State's intent to seek the death penalty in this case and to provide notice of aggravating circumstances, statutory and nonstatutory; a list of witnesses to testify during the second stage of trial; and a notice of exhibits to be used during the second stage of trial.

1. The State will prove, beyond a reasonable doubt, during the punishment stage of trial, the following aggravating circumstances:

a. Pursuant to Missouri Revised Statutes, Section No.565.032.2(4) (Cum. Supp. 1991), the defendant committed the offense of murder in the first degree for himself for the purpose of receiving money or any other thing of monetary value from the victim of the murder;

b. Pursuant to Missouri Revised Statutes, Section No. 565.032.2(6) (Cum. Supp. 1991), the defendant caused or directed another to commit murder in the first degree;

c. Pursuant to Missouri Revised Statutes, Section No. 565.032.2(7) (Cum. Supp 1991), the murder in the first degree was outrageously or wantonly vile, horrible or inhumane in that it involved torture or depravity of mind.

d. Pursuant to Missouri Revised Statutes, Section No. 565.032.2(12) (Cum. Supp. 1991), the murdered individual was a witness or potential witness in any past or pending investigation or past or pending prosecution and was killed as a result of her status as a witness or potential witness.

2. The State will prove the following nonstatutory circumstances authorized by Missouri Revised Statutes, Section No. 565.032.1(3) (Cum. Supp. 1991):

a. That the defendant, in committing murder in the first degree, endangered the safety of his children, in particular, Richard DeCaro, Jr.; Jodie DeCaro; Tony DeCaro; and Courtney DeCaro, between 11:30am - 12:15pm on March 6, 1992, at a time when his children were arriving home from school and were preparing a trip to the Lake of the Ozarks with defendant, by bringing contract killer Danile Basile into his home;

b. That the defendant, in committing murder in the first degree, endangered the safety of Carl Crain, who delivered milk to his home between 2:15pm and 2:30pm on March 6, 1992; Dr. James Sneed and his family, who arrived home at 3:00pm on

March 6, 1992; family friend, Mary Jackson, and her daughter, who came to the DeCaro home to pick up Girl Scouts cookies at 3:15pm; and the family of Julie Cinco, who arrived home between 3:45pm - 4:00pm, on March 6, 1992, all at a time while Daniel Basile was hiding in the DeCaro home—at #12 Hidden Meadow Court—either waiting to kill Elizabeth DeCaro or make good his escape from the DeCaro home after Richard DeCaro had driven him and placed him in the home on or about 11 :40am on March 6, 1992;

c. That the defendant, in committing murder in the first degree, endangered the lives of people in his neighborhood by placing Danile Basile in his home, #12 Hidden Meadow Drive, St. Charles, MO, on March 6, 1992, as part of a contract to kill his wife, knowing that Danile Basile would have to escape throughout the adjacent neighborhood at great risk and danger to all the residents surrounding the neighborhood; and

d. That the defendant, in committing murder in the first degree, caused undue mental anguish to the children and adults in the neighborhood immediately adjacent to his home at #12 Hidden Meadow Drive, St. Charles, Missouri, who were traumatized by a killing of a friend and the mother of their friends in her home near their houses by the defendant's introduction of the contract killer, Daniel Basile, into his home on March 6, 1992.

3. In the penalty phase, the State will introduce evidence concerning the life of murder victim, Elizabeth DeCaro, and the impact of the crime upon her family and others.

4. In the penalty phase, the State will introduce the following penalty phase evidence relating to the victim:

a. Pictures in a family scrapbook, showing various stages of the victim's life;

b. Cards, statues and figurines that were important to the victim's sister, Teresa;

c. A portrait of Elizabeth DeCaro which had been framed by her family;

d. Cards which Elizabeth DeCaro had sent her family and friends on various holidays throughout her life;

e. A card given to Jenny McKay on the morning of March 6, 1992, when Mrs. McKay was watching her daughter, Courtney DeCaro; and

f. A letter written to the DeCaro family by Lori Kliethermes; a letter written by her brother's friend, Gregory Madden (current address unknown).

5. Pursuant to Missouri Revised Statutes, Section No. 565.032.1(2) (Cum Supp. 1993), the State shall introduce and ask the jury to consider, in the penalty phase, all evidence introduced at the guilt phase of the trial.

6. The State further notifies the defense that pursuant to Missouri Revised Statutes, Section No. 565.005.1(2) (Cum Supp. 1991), the State intends to call as witnesses at the second stage of trial the following individuals:

a. Georgianna Van Iseghem: 10921 St. Francis; St. Ann, MO

b. James Van Iseghem: 121 Shirewood; St. Charles, MO

c. Teresa Van Iseghem: 10921 St. Francis; St. Ann, MO

d. Melanie Enklemann: 1116 Brisbane Dr.; Chesterfield, MO

e. Lori Kliethermes: 7 South Boxwood; O'Fallon, MO 63366

f. The victim's friend, Gregory Maddan (current address unknown).

g. Pam Hanley: 3350 River Rd.; Toledo. OH 43614.

h. Jenny McKay: 1205 Woodridge Dr.; St. Peters, MO 63376.

i. Michael McSuff: 2056 Willow Trail; St. Charles, MO

All witnesses are endorsed for the first stage of the trial.

Respectfully submitted,

/s/ Timothy A. Braun
Missouri Bar No. 23587
Prosecuting Attorney for St. Charles County, Missouri
Attorney for State of Missouri
300 North Second St.
St. Charles, MO 63301
(314) 949-7355

Copy of the forgoing served on Defendant's Attorney this 17 day of August, 1994 by Fax 725-8443.

/s/ Timothy A. Braun
Timothy A. Braun

CERTIFICATE OF TRUE COPY

I, Susan E. Brown, Clerk of Circuit Court, within and for the county of St. Charles, State of Missouri, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.

Witness my hand and SEAL of said Court this 16th day of July, 1996. /s/ Susan E. Brown by /s/ Barbara J. Heisner

SUSAN E. BROWN, Clerk

APPENDIX D

EXHIBIT D

VERDICT

[Filed SEP 14, 1994]

We, the jury, find the defendant Richard DeCaro not guilty.

/s/ Randy C. Nelson
FOREPERSON

STATE OF MISSOURI)
) ss
COUNTY OF ST CHARLES)

I, SUSAN E. BROWN, Clerk of the Circuit Court within and for the County of St. Charles, State of Missouri, do hereby certify that the foregoing are true copies of original documents remaining on file and record in my office.....

WITNESS my hand and SEAL of said Court this 25th day of June 1996.

/s/ Susan E. Brown
SUSAN E. BROWN, Clerk

by /s/ Barbara J. Heisner
Deputy

APPENDIX E

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No.

UNTIED STATES OF AMERICA,
Plaintiff,
v.
RICHARD DeCARO
and
DANIEL BASILE,
Defendants.

INDICTMENT

COUNT 1

The Grand Jury Charges That:

From in or about November, 1991, the exact beginning date being unknown to the Grand Jury, up to and including the date of this Indictment, in the Eastern District of Missouri, and elsewhere,

RICHARD DeCARO and DANIEL BASILE,

the defendants, together with other persons both known and unknown to the Grand Jury, did unlawfully, knowingly, and intentionally combine, conspire, confederate and agree to commit an offense against the United States of America, that is, the crime of murder for hire in violation of Title 18, United States Code, Section 1958, by using and causing another to use the United States Mails and other facilities in interstate commerce with the intent that the murder of ELIZABETH DeCARO be

committed in violation of the laws of the State of Missouri, as consideration for the receipt of, and as consideration for a promise and agreement to pay things of pecuniary value, namely, money and other items of property.

The objects and purposes of the conspiracy were as follows:

1. RICHARD DeCARO sought to have his wife, ELIZABETH DeCARO, murdered and, further, he sought money and property.

2. RICHARD DeCARO took out a life insurance policy on the life of his wife, ELIZABETH DeCARO, which would pay to RICHARD DeCARO, as the beneficiary, the sum of One Hundred Thousand Dollars ($100,000.00) upon the death of ELIZABETH DeCARO.

3. RICHARD DeCARO recruited DANIEL BASILE to murder ELIZABETH DeCARO and, further, RICHARD DeCARO agreed to pay DANIEL BASILE sums of money and property for committing the murder.

4. RICHARD DeCARO and DANIEL BASILE agreed as part of the conspiracy to pursue a scheme to murder ELIZABETH DeCARO which included the following steps:

a. RICHARD DeCARO staged the theft by DANIEL BASILE of a 1989 GMC Van which was used by the family of RICHARD DeCARO. As a result of this staged theft, RICHARD DeCARO submitted false insurance claims to Allstate Insurance Company to cover the cost of the van as well as personal items contained in the van. The staged theft of the van was part of a package deal which also included the murder of ELIZABETH DeCARO.

b. RICHARD DeCARO provided DANIEL BASILE with the keys to the 1989 GMC Van and a map directing him to the

DeCARO residence at 12 Hidden Meadows Court, St. Charles, Missouri.

c. As part of the scheme, RICHARD DeCARO took the DeCARO children and the family dog to the Lake of the Ozarks on March 6, 1992 so that on that day ELIZABETH DeCARO would be alone in the family residence located at 12 Hidden Meadow Court, St. Charles, Missouri.

d. On March 6, 1992 ELIZABETH DeCARO returned to her home in St. Charles county and entered the house after parking her 1985 Chevrolet Blazer in the garage. As part of the plan, DANIEL BASILE murdered ELIZABETH DeCARO in her home. He shot her twice in back of her head.

e. As part of the scheme, DANIEL BASILE loaded personal items from the DeCARO house into the 1985 Chevrolet Blazer and, drove the 1985 Chevrolet Blazer out of the garage and away from the DeCARO residence.

f. As part of the scheme RICHARD DeCARO denied knowing DANIEL BASILE and they both engaged in other acts of concealment of their conspiracy.

5. It was part of the conspiracy that RICHARD DeCARO caused mailings to be made as part of the processing of the insurance policies and the false claims of loss, including claims for loss on the 1989 GMC van, the 1985 Chevrolet Blazer, the personal property items from the DeCARO residence and a claim for the insurance proceeds payable upon the death of ELIZABETH DeCARO.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused the commission of the following overt acts in the Eastern District of Missouri and elsewhere:

1. In or about January, February, March, 1992, RICHARD DeCARO and DANIEL BASILE entered into an agreement that DANIEL BASILE would murder RICHARD DeCARO'S wife, RICHARD DeCARO and DANIEL BASILE further agreed that DANIEL BASILE would receive United States Currency and a 1989 GMC Van, a 1985 Chevrolet Blazer and personal property items belonging to RICHARD and ELIZABETH DeCARO.

2. In January and February 1992, RICHARD DeCARO and DANIEL BASILE met and entered into an agreement wherein DANIEL BASILE would steal a 1989 GMC Van and its contents, said van being used by the family of RICHARD DeCARO.

3. On or about February 8, 1992, RICHARD DeCARO parked his 1989 GMC Van in his driveway at 12 Hidden Meadow Court, St. Charles, Missouri.

4. On or about February 8, 1992, DANIEL BASILE took a 1989 GMC Van from RICHARD and ELIZABETH DeCARO's driveway at 12 Hidden Meadow Court, St. Charles, Missouri, whereafter DANIEL BASILE burned said vehicle.

5. On or about February 11, 1992, RICHARD DeCARO met with DANIEL BASILE at the Old Orchard Standard Station, Webster Groves, Missouri.

6. On or about February 18, 1992, RICHARD DeCARO filled out an 'Affidavit of Automobile Total Theft" and caused a claim of loss be submitted to ALLSTATE INSURANCE COMPANY.

7. In or about the first week of March 1992 RICHARD DeCARO went to the South County Stables to meet DANIEL BASILE.

8. On or about March 6, 1992 RICHARD DeCARO drove to the Holiday Inn, Lake of the Ozarks with his children and the family dog.

9. On or about March 6, 1992 DANIEL BASILE murdered ELIZABETH DeCARO by shooting her two times in the back of the head.

10. On or about March 6, 1992 DANIEL BASILE took various household items and RICHARD DeCARO'S 1985 Chevrolet Blazer.

11. On or about March 12, 1992, RICHARD DeCARO had a conversation with an individual in which RICHARD DeCARO denied knowing DANIEL BASILE.

12. On or about March 11, 1992 DANIEL BASILE made a telephone call in the presence of Alan Decker.

In violation of Title 18, United States Code, Section 371.

COUNT II

The Grand jury further charges that:

From on or about November 1, 1991, to on or about March 31, 1992, in the Eastern District of Missouri, and elsewhere,

RICHARD DeCARO and DANIEL BASILE,

the defendants, used and caused another to use the mail and other facilities in interstate commerce with intent that the murder of ELIZABETH DeCARO be committed in violation of the laws of the state of Missouri as consideration for the receipt of, and as consideration for a promise and agreement to pay things of pecuniary value, that is money in amounts up to Fifteen Thousand Dollars ($15,000.00) and other property.

In violation of Title 18, United States Code, Sections 1985 and 2.

COUNTS III - VII

The Grand Jury further charges that:

1. The allegations set forth in Count I of this indictment are realleged and incorporated as though set forth in full herein.

2. At all times relevant to this indictment, the following were insurance companies which accepted premiums, provided various forms of life insurance and insurance coverage for homes and contents, and automobiles and contents, and entertained claims and paid claims on those insurance policies in the Eastern District of Missouri and elsewhere:

ALLSTATE INSURANCE COMPANY

ALLSTATE LIFE INSURANCE COMPANY

THE HANOVER INSURANCE COMPANIES.

3. ALLSTATE INSURANCE COMPANY and THE HANOVER INSURANCE COMPANIES provided homeowners insurance and automobile property/casualty insurance which includes, among other coverages, loss by theft. In examining a claim of loss, the insurance companies obtain information including loss statements submitted by insured, police reports and information concerning value for the items alleged to have been taken by theft. This information was relied upon by the insurance companies to assess the proper amount of money to be paid to claimants.

4. ALLSTATE LIFE INSURANCE COMPANY provided through policies that death proceeds be paid to the beneficiary of a life insurance policy. In examining a claim for payment of life insurance proceeds, ALLSTATE LIFE INSURANCE COMPANY obtained information including loss statements submitted for the collection of death proceeds, police reports and information related to the loss. This information was relied upon by ALLSTATE LIFE INSURANCE COMPANY to assess whether the death proceeds should be paid to the benificiary.

SCHEME TO DEFRAUD

5. Beginning in or about November, 1991, and continuing up to and including the date of this indictment, in the Eastern District of Missouri,

RICHARD DeCARO and DANIEL BASILE,

the defendants, devised and intended to devise a scheme and artifice to defraud ALLSTATE INSURANCE COMPANY, ALLSTATE LIFE INSURANCE COMPANY and the HANOVER INSURANCE COMPANY and to obtain money and property from those insurance companies by means of false and frandulent pretenses, representations and promises, and the deceitful concealment of material facts knowing the pretenses, representations and promises were false and fraudulent when made and that the concealed facts were material, and, for the purpose of executing this scheme and in executing and attempting to execute this scheme, made mailings and caused others to make mailings.

6. The scheme and artifice as devised and intended to be devised by RICHARD DeCARO and DANIEL BASILE was, in substance, as follows:

a. RICHARD DeCARO plotted to have his wife, ELIZABETH DeCARO, murdered. As part of this scheme, RICHARD DeCARO recruited DANIEL BASILE to commit the murder in return for the payment of money and other property. As a further part of the scheme, RICHARD DeCARO staged the theft by DANIEL BASILE of vehicles used by his family so as to facilitate DANIEL BASILE's commission of the murder and to provide the basis for false claims to the insurance companies for payment of benefits under policies in effect.

b. On or about January 3, 1992, RICHARD DeCARO took out a life insurance policy on the life of his wife, ELIZABETH

DeCARO, and, under this policy, RICHARD DeCARO was the beneficiary of One Hundred Thousand Dollars ($100,000.00) in life insurance proceeds be paid upon the death of ELIZABETH DeCARO.

c. In January, February and March, 1992, RICHARD DeCARO and DANIEL BASILE entered into an agreement that DANIEL BASILE would murder ELIZABETH DeCARO in exchange for the payment of money and other property to DANIEL BASILE.

d. It was part of the scheme that RICHARD DeCARO would and did offer DANIEL BASILE money and property for stealing the 1989 GMC Van so that RICHARD DeCARO could file a false and fraudulent claim representing that the van and its contents had been stolen in order to collect insurance proceeds.

e. It was further a part of the scheme that on or about February 8, 1992, DANIEL BASILE took the 1989 GMC Van and its contents from the residence of RICHARD DeCARO's in St. Charles County, Missouri.

f. On or about February 18, 1992 RICHARD DeCARO did file with ALLSTATE INSURANCE COMPANY a false and fraudulent claim for payment of benefits on the loss of the van and its contents.

g. It was further a part of the scheme and artifice that RICHARD DeCARO arranged for DANIEL BASILE to murder RICHARD DeCARO's wife, ELIZABETH DeCARO on March 6, 1992, take various items and possessions from RICHARD DeCARO'S home and take RICHARD DeCARO'S 1985 Chevrolet Blazer and its contents, and in return RICHARD DeCARO agreed to pay DANIEL BASILE money and further agreed to allow DANIEL BASILE to take and dispose of items from RICHARD DeCARO'S residence and 1985 Chevrolet Blazer.

h. It was further a part of the scheme that on or about December 21, 1994, RICHARD DeCARO signed a false and fraudulent insurance claim with the ALLSTATE LIFE INSURANCE COMPANY to recover One Hundred Thousand Dollars ($100,000.00) in insurance proceeds after causing the murder of his wife.

i. It was further a part of the scheme that on or after December 21, 1994, RICHARD DeCARO took whatever action was required by ALLSTATE LIFE INSURANCE COMPANY to process his claim, including responding to the requests by ALLSTATE LIFE INSURANCE COMPANY for information.

j. It was further a part of the scheme and artifice that or about January 24, 1995, RICHARD DeCARO signed a false and fraudulent insurance claim with the HANOVER INSURANCE COMPANY to recover benefits from the staged theft of the 1985 Chevrolet Blazer.

k. It was further a part of the scheme that RICHARD DeCARO took whatever action was required by HANOVER INSURANCE COMPANY to process his claim, including responding to HANOVER INSURANCE COMPANY requests for information.

l. It was further a part of the scheme that in or about January, 1995, RICHARD DeCARO filed a false and fraudulent insurance claim with the ALLSTATE INSURANCE COMPANY for the payment on the loss of personal property items allegedly stolen from the DeCARO residence by DANIEL BASILE on March 6, 1992 while he was following through on the scheme to kill ELIZABETH DeCARO.

m. It was further a part of the scheme that RICHARD DeCAR0 took whatever action was required by ALLSTATE INSURANCE COMPANY to process his claim, including responding to requests by ALLSTATE INSURANCE COM-

PANY for information.

n. It was further a part of the scheme that RICHARD DeCARO received checks paidby the insurance companies pursuant to false and fraudulent claims submitted by him.

7. Beginning in November 1991 and continuing through the date of this indictment, in the Eastern District of Missouri and elsewhere, the defendants as identified in the specific counts below, acting for the purpose of executing and attempting to execute the scheme and artifice described herein caused the following items and matters to be placed in a post office and in authorized depository for mail matter, said items and matters to be delivered by the Postal Service, and caused items and matters to be taken and received therefrom, and knowingly caused the following items and matters to be delivered by mail according to the directions thereon and at the place at which it was directed to be delivered by the person to whom it is addressed, said items and mail matter being more fully described below in each count, charges the defendant responsible for such count, the date on or about which the mailing was made or received, and the business or person involved in the mailing, including the location of the mailing entity and the location of the addressee:

COUNT	DEFENDANT	DATE	NATURE OF MAILING	FROM	TO
III	DECARO	1/3/92	Life Insurance Application	Ralph Vitiello Clayton, Mo.	Allstate Life Insurance Co. Deerfield, Ill.
IV	DeCARO and BASILE	2/18/92	"Affidavit of Automobile Total Theft" (GMC Van)	RICHARD DeCARO St. Charles, Mo.	JOAN LUCAS Allstate Insurance Company St. Louis, Mo.
V	DeCARO	1/12/95	Claimant's Statement (Life Insurance)	RICHARD DeCARO Florissant, Mo.	Allstate Life Insurance Co. Vernon Hills, Ill.
VI	DeCARO and BASILE	1/24/94	Proof of Loss (Loss on Blazer)	RICHARD DeCARO Florissant, Mo.	The Hanover Insurance Companies St. Louis, Mo.
VII	DeCARO	3/31/95	Check for $1,900.00 (residence/ personal property)	Allstate Insurance St. Louis, Mo.	RICHARD DeCARO St. Louis, Mo.

In violation of Title 18, United States Code, Sections 1341 and 2.

A TRUE BILL

FOREPERSON

EDWARD L. DOWD, JR.
UNITED STATES ATTORNEY

THOMAS E. DITTMEIER

APPENDIX F

EXHIBIT F

TERMED APPEAL
2/26J

U.S. District Court

Eastern District of Missouri (Southeastern)

CRIMINAL DOCKET FOR CASE #: 96-CR-5-ALL

Filed: 02/13/96

USA v. DeCaro, et al
Dkt # : is 4:95-cr-00182

Case Assigned to: Honorable Stephen N. Limbaugh

RICHARD DECARO (1) defendant [term 06/21/96]	N. Scott Rosenblum, Partner [term 06/21/96] [COR LD NTC ret] WITTNER AND POGER 7700 Bonhomme Avenue Suite 400 Clayton, MO 63105 314-862-3535

Pending Counts:	Disposition
18:1958-7471.F & 18:371 Conspiracy to commit murder for hire and by using the U.S. Mails.(1)	Deft sentenced to the Bureau of Prisons for a term of LIFE. This term consists of life as to Count 2, and 60 months as to each of Counts 1, 3, 4, 5, 6 and 7, such terms to run concurrently, for an aggregate term of imprisonment of life. Super-

	vised release for a term of 3 years as to counts 1-7, all such terms to run concurrently, for an aggregate term of S. R. of 3 years. S. A.- $350.00 (1)
18:1958 and 2 - Use of mail with intent that the murder of Elizabeth DeCaro be committed for receipt of money. (2)	Deft sentenced to the Bureau of Prisons for a term of LIFE. This term consists of life as to Count 2, and 60 months as to each of Counts 1, 3, 4, 5, 6 and 7, such terms to run concurrently, for an aggregate term of imprisonment of life. Supervised release for a term of 3 years as to counts 1-7, all such terms to run concurrently, for an aggregate term of S. R. of 3 years. S. A. - $350.00 (2)

18:1341.F POSTAL, INTERSTATE WIRE, RADIO, ETC. For collection of death proceeds from various insurance companies. (3 - 7)	Deft sentenced to the Bureau of Prisons for a term of LIFE. This term consists of life as to Count 2, and 60 months as to each of Counts 1, 3, 4, 5, 6 and 7, such terms to run concurrently, for an aggregate term of imprisonment of life. Supervised release for a term of 3 years as to counts 1-7, all such terms to run concurrently, for an aggregate term of S. R. of 3 years. S. A. - $350.00 (3 - 7)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints:

NONE

TERMED APPEAL 2/26J

DANIEL BASILE (2) defendant [term 06/20/96]	Thomas F. Flynn [term 06/20/96] [COR LD NTC pda] Lee T. Lawless, Asst. F.P. Defender [term 11/03/95] [COR LD NTC pda] FEDERAL PUBLIC DEFENDER 1010 Market Street Suite 200 St. Louis, MO 63101 314-241-1255 FTS 262-6186

Pending Counts:	Disposition
18:1958-7471.F & 18:371 Conspiracy to commit murder for hire and by using the U.S. Mails. (1)	Deft sentenced to Life imprisonment on Count 2, 60 months on each of counts 1, 4 & 6 to run concurrently, for an aggregate term of Life; S. R. - three years on each of counts 1, 2, 4 & 6 to run concurrently for an aggregate term of 3 years S.R.; S.A. - $200.00 (1)
18:1958 and 2 - Use of mail with intent that the murder of Elizabeth DeCaro be committed for receipt of money. (2)	Defendant sentenced to Life imprisonment as to Ct. 2, 60 months as to Cts. 1, 4 and 6, all terms to run concurrently for an aggregate term of life. This term shall also run concurrently with dft's sentence imposed on 7/1/94-in St. Charles County. Term of three years supervised release on each of counts 1,2,4 & 6, to run concurrently for an aggregate term of S.R. of 3 years; S.A. of $200.00 (2)
18:1341.F POSTAL, INTERSTATE WIRE, RADIO, ETC. Scheme to defraud various insurance companies. (4)	Defendant sentenced to Life imprisonment as to Ct. 2, 60 months as to Cts. 1, 4 and 6, all terms to run concurrently for an aggregate term of life. This term shall also run concurrently with dft's sentence imposed on 7/1/94 in St. Charles County.

	Term of three years supervised release on each of counts 1,2,4 & 6, to run concurrently for an aggregate term of S.R. of 3 years; S.A. of $200.00 (4)
18:1341.F POSTAL, INTERSTATE WIRE, RADIO, ETC. Scheme to defraud various insurance companies. (6)	Defendant sentenced to Life imprisonment as to Ct. 2, 60 months as to Cts. 1, 4 and 6, all terms to run concurrently for an aggregate term of life. This term shall also run concurrently with dft's sentence imposed on 7/1/94 in St. Charles County. Term of three years supervised release on each of counts 1,2,4 & 6, to run concurrently for an aggregate term of S.R. of 3 years; S.A of $200.00 (6)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints:

NONE

U. S. Attorneys:

Thomas E. Dittmeier
[COR LD NTC]
OFFICE OF U.S. ATTORNEY
1114 Market Street Room 401
St. Louis, MO 63101
314-539-2200

5/31/95	1	INDICTMENT (referred to Mag. Judge Terry I. Adelman) by USA ; Counts filed against Richard DeCaro (1) count(s) 1, 2, 3-7, Daniel Basile (2) count(s) 1, 2, 4, 6 (bbk) [Entry date 06/05/95]
5/31/95	--	ARREST Warrant issued for Richard DeCaro by Honorable George F. Gunn Jr. (bbk) [Entry date 06/05/95]
5/31/95	--	ARREST Warrant issued for Daniel Basile by Honorable George F. Gunn Jr. (bbk) [Entry date 06/05/95]
5/31/95	2	ORDER by Mag Judge Frederick Buckles that indictment shall be sealed and suppressed until defendant is in custody. (bbk) [Entry date 06/05/95]
5/31/95	--	MOTION for recommended bail in the amount of $250,000.00 by USA (bbk) [Entry date 06/05/95]
5/31/95	3	NOTICE that bail has been denied as to Deft. Basile and deft. has been ordered detained by plaintiff USA (bbk) [Entry date 06/05/95]
5/31/95	4	MOTION for detention, and for hearing by USA (bbk) [Entry date 06/05/95]
5/31/95	5	LETTER lifting suppression by USA (bbk) [Entry date 06/05/95]
5/31/95	--	ARREST of defendant Richard DeCaro on 5/31/95 (bbk) [Entry date 06/05/95]
5/31/95	6	MINUTES: before Mag Judge Frederick Buckles initial appearance of Richard DeCaro : Attorney(s) present;, ; arraignment set for 2:00 6/

		6/95 for Richard DeCaro, $250,000.00/C/S Bond set for Richard DeCaro Deft. remanded to custody of U. S. Marshal.-court reporter: Craig Liddy. Hearing also held on 6/1/95 before Judge Buckles, Patti White, Ct. Reporter. (bbk) [Entry date 06/05/95]
6/1/95	7	APPEARANCE for defendant Richard DeCaro by Attorney N. Scott Rosenblum (bbk) [Entry date 06/05/95]
6/1/95	8	BOND Posted ($215,200.00/Property) by Richard DeCaro (bbk) [Entry date 06/05/95]
6/1/95	--	Docket Modification (Utility) terminating motion for detention [4-1],:terminating motion for hearing [4-2] (bbk) [Entry date 06/05/95]
6/1/95	9	ORDER setting conditions of release for Richard DeCaro by Mag Judge Frederick Buckles (bbk) [Entry date 06/05/95]
6/1/95	--	ARREST Warrant returned executed as to Richard DeCaro on 5/31/95 (lal) [Entry date 06/09/95]
6/5/95	10	BOND Posted ($250,000 secured by property) by Richard DeCaro (kcm) [Entry date 06/06/95]
6/5/95	--	APPLICATION by plaintiff USA for writ of habeas corpus ad prosequendum for deft. Daniel Basile to appear in Court before the Honorable George F. Gunn, Jr. on 6/8/95 for initial appearance. WRIT TO ISSUE - GFG. (gnb) [Entry date 06/08/95] [Edit date 06/08/95]
6/5/95	--	WRIT issued to Potosi Correctional Center as to deft. Daniel Basile. (gnb) [Entry date 06/08/95] [Edit date 06/08/95]

6/5/95	--	ARREST of defendant Daniel Basile on 6/5/95. (gnb) [Entry date 06/08/95]
6/6/95	11	MINUTES: before Mag. Judge Terry I. Adelman dft Richard DeCaro arraigned; not guilty plea entered; Attorney present;, ; motion filing ddl set for 6/17/95 for Richard DeCaro ; motion/evidentiary hearing set for 10:00 7/7/95 for Richard DeCaro ; jury trial set for 9:00 8/7/95 for Richard DeCaro Dft released on existing bond. court reporter: K. Moore (ksm) [Entry date 06/06/95]
6/7/95	--	ORDER by Mag. Judge Terry I. Adelman - IT IS HEREBY ORDERED that the Federal Public Defender for this District is appt'd to represent Daniel Basile in this matter. (cc: all counsel, USPT, USP, USM) (lal) [Entry date 06/20/95]
6/8/95	12	MINUTES: before Mag. Judge Terry I. Adelman initial appearance of Daniel Basile ; Attorney(s) Lee T. Lawless present. Deft. remanded to custody. court reporter: audio operator K. Moore (lal) [Entry date 06/20/95]
6/8/95	13	MINUTES: before Mag. Judge Terry I. Adelman dft Daniel Basile arraigned; NOT GUILTY to Cts. 1, 2, 4, 6 plea entered; Attorney present;, ; jury trial set for 9:00 8/7/9S for Daniel Basile. Deft. remanded to custody. court reporter; audio operator K. Moore (lal) [Entry date 06/20/95]
6/19/95	14	ARREST Warrant returned executed as to Daniel Basile on 6/7/95 (lal) [Entry date 06/20/95]
6/19/95	15	MOTION to extend time to file pretrial motions until June 26, 1995 by Daniel Basile (lal) [Entry date 06/20/95]

6/19/95	16	MOTION for disclosure of intent of Govt. to use 404(b) evidence by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	17	MOTION for order to inspect and video tapes by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	18	MOTION for disclosure of information pursuant to Brady v. Maryland by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	19	MOTION for discovery and disclosure by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	20	MOTION for discovery and inspection by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	21	MOTION to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	22	MOTION to produce copy of transcript of the grand jury testimony or in the alternative to inspect the grand jury minutes by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	23	MOTION for disclosure of impeaching information by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	24	MOTION to produce investigative reports by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	25	MOTION for early production of Jenck's Act materials by Richard DeCaro (lal) [Entry date 06/20/95]
6/19/95	26	MOTION to produce names and addresses of all persons expected to be called as witnesses by the

USA at trial by Richard DeCaro (lal) [Entry date 06/20/95]

6/19/95 27 MOTION to suppress evidence by Richard DeCaro (lal) [Entry date 06/20/95]

6/19/95 28 MOTION to suppress identification by Richard DeCaro (lal) [Entry date 06/20/95]

6/19/95 29 MOTION to suppress statements by Richard DeCaro (lal) [Entry date 06/20/95]

6/19/95 30 MOTION to suppress evidence of tangible objects by Richard DeCaro (lal) [Entry date 06/20/95]

6/19/95 31 MOTION for order to require the Govt. to reveal any deal, agreement, or understanding with any potential prosecution witness or informer by Richard DeCaro (lal) [Entry date 06/20/95] .

6/19/95 32 MOTION for order to require the Govt. to reveal any agreements or concessions with witnesses that may influence their testimony by Richard DeCaro (lal) [Entry date 06/20/95]

6/19/95 33 MOTION for leave to to file additional pretrial motions up to and including June 26, 1995 by Richard DeCaro (lal)

6/21/95 34 ORDER by Mag. Judge Terry I. Adelman - IT IS HEREBY ORDERED that the govt.'s motion for pretrial detention be denied as moot. IT IS FURTHER ORDERED that deft. shall have reasonable opportunity for private consultation with counsel in order to adequately prepare for the trial of this case. (cc: all counsel, USPT, USP, USM) (lal) [Entry date 06/21/95]

6/21/95	35	MEMORANDUM by defendant Richard DeCaro requesting that 15 subpoenas issue for the purpose of discovery. (Issued) (lal) [Entry date 06/23/95]
6/21/95	36	RULED DOCUMENT by Mag. Judge Terry I. Adelman granting motion for leave to to file additional pretrial motions up to and including June 26, 1995 [33-1] (cc: all counsel, USPT, USP, USM) (lal) [Entry date 06/23/95]
6/21/95	37	MOTION to extend time to file pretrial motions up to and including June 26, 1995 by Daniel Basile (lal) [Entry date 06/23/95]
6/21/95	37	RULED DOCUMENT by Mag. Judge Terry I. Adelman granting motion to extend time to file pretrial motions up to and including June 26, 1995 [37-1] (cc: all counsel, USPT, USP, USM) (lal) [Entry date 06/23/95]
6/21/95	38	RULED DOCUMENT by Mag. Judge Terry I. Adelman granting motion to extend time to file pretrial motions until June 26, 1995 [15-1] (cc: all counsel, USPT, USP, USM) (lal) [Entry date 06/23/95]
6/23/95	39	ORDER by Honorable George F. Gunn Jr. ; jury trial re set for 9:00 10/2/95 for Richard DeCaro, for Daniel Basile (cc: all counsel, USPT, USP, USM) (lal) [Entry date 06/26/95]
6/26/95	40	MOTION to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 by Richard DeCaro (lal) [Entry date 06/27/95]
6/26/95	41	MOTION for a bill of particulars by Richard DeCaro (lal) [Entry date 06/27/95]

6/26/95 42 MOTION for order to transfer case from the district for trial by Richard DeCaro (lal) [Entry date 06/27/95]

6/26/95 43 MOTION to compel disclosure of evidence subject to suppression under F.R.CR.P. 12(b)(3) by Daniel Basile (lal) [Entry date 06/27/95]

6/26/95 44 MOTION for pretrial notice of similar act evidence by Daniel Basile (lal) [Entry date 06/27/95]

6/26/95 45 MOTION for discovery of statements of co-defts and co-conspirators by Daniel Basile (lal) [Entry date 06/27/95]

6/26/95 46 MOTION for discovery by Daniel Basile (lal) [Entry date 06/27/95]

6/26/95 47 MOTION for discovery and production of favorable evidence by Daniel Basile (lal) [Entry date 06/27/95] .

6/26/95 48 MOTION for disclosure of impeaching information by Daniel Basile (lal) [Entry date 06/27/95]

6/26/95 49 MOTION for order requiring the Govt. to disclose full nature and extent of consideration offered to or sought by the Govt. or its agents on behalf of informants by Daniel Basile (lal) [Entry date 06/27/953]

6/26/95 50 MOTION for production of electronic surveillance and wire-tapping materials by Daniel Basile (lal) [Entry date 06/27/95]

6/26/95 51 MOTION to suppress evidence and statements by Daniel Basile (lal) [Entry date 06/27/95]

6/26/95	52	MOTION for disclosure of the identity of informants by Daniel Basile (lal) [Entry date 06/27/95]
6/26/95	53	MOTION for severance by Daniel Basile (lal) [Entry date 06/27/95]
6/26/95	54	MOTION for severance by Richard DeCaro (lal) [Entry date 06/27/95]
6/27/95	55	MOTION for leave to file motion to dismiss indictment for violation of state and federal double jeopardy clauses one day late by Richard DeCaro (lal) [Entry date 06/27/95]
6/27/95	55	RULED DOCUMENT by Mag. Judge Terry I. Adelman granting motion for leave to file motion to dismiss indictment for violation of state and federal double jeopardy clauses one day late [55-13 (cc: all counsel. USPT, USP, USM) (lal) [Entry date 06/27/95]
6/27/95	56	MOTION to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 for violation of state and federal double jeopardy clauses by Richard DeCaro (lal) [Entry date 06/27/95]
7/10/95	--	Docket Modification (Utility) pretrial motions termed on 7/10/95 (bbk) [Entry date 07/10/95]
7/31/95	57	RETURN of subpoena of for Custodian of Records for KTVI and documents fld. by Richard DeCaro (lal) [Entry date 08/01/95]
7/31/95	58	RETURN of subpoena of for Custodian of Records for KDNL with documents fld.. by Richard DeCaro (lal) [Entry date 08/01/95]

7/31/95 59 RETURN of subpoena of for Custodian of Records for KPLR wit documents fld. by Richard DeCaro (lal) [Entry date 08/01/95]

7/31/95 60 RETURN of subpoena of for Custodian of Records for KSDK with documents fld. by Richard DeCaro (lal) [Entry date 08/01/95]

7/31/95 61 RETURN of subpoena of for Custodian of Records for St. Louis Post-Dispatch with documents fld. by Richard DeCaro (lal) [Entry date 08/01/95]

7/31/95 62 RETURN of subpoena of for Custodian of Records for KMOV with documents fld. by Richard DeCaro (lal) [Entry date 08/01/95]

8/7/95 63 DEMAND FOR NOTICE OF ALIBI by plaintiff USA (kms) [Entry date 08/08/95]

8/7/95 64 MOTION for discovery and inspection of any books, papers, results/reports of examinations, etc. and to produce statements of any witnesses by USA-(kms) [Entry date 08/08/95]

8/10/95 65 RESPONSE by plaintiff USA to motion to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 for violation of state and federal double jeopardy clauses [56-1], motion for severance [54-1], motion for severance [53-1], motion for disclosure of the identity of informants [52-1], motion to suppress evidence and statements [51-1], motion for production of electronic surveillance and wire-tapping materials [50-1], motion for order requiring the Govt. to disclose full nature and extent of consideration offered to or sought by the Govt. or its agents on behalf of

informants [49-1], motion for disclosure of impeaching information [48-1], motion for discovery and production of favorable evidence [47-1], motion for discovery [46-1], motion for discovery of statements of co-defts and co-conspirators [45-1], motion for pretrial notice of similar act evidence [44-1], motion to compel disclosure of evidence subject to suppression under F.R.CR.P. 12(b)(3) [43-1], motion for order to transfer case from the district for trial [42-1], motion for a bill of particulars [41-1], motion to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 [40-1], motion for order to require the Govt. to reveal any agreements or concessions with witnesses that may influence their testimony [32-1], motion for order to require the Govt. to reveal any deal, agreement, or understanding with any potential prosecution witness or informer [31-1], motion to suppress evidence of tangible objects [30-1], motion to suppress statements [29-1], motion to suppress identification [28-1], motion to suppress evidence [27-1], motion to produce names and addresses of all persons expected to be called as witnesses by the USA at trial [26-1], motion for early production of Jenck's Act materials [25-1], motion to produce investigative reports [24-1], motion for disclosure of impeaching information [23-1], motion to produce copy of transcript of the grand jury testimony or in the alternative to inspect the grand jury minutes [22-1], motion to dismiss count (s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 [21-1], motion for discovery and inspection [20-1], motion for discovery and disclosure [19-1], motion for dis-

		closure of information pursuant to Brady v. Maryland [18-1], motion for order to inspect and video tapes [17-1], motion for disclosure of intent of Govt. to use 404(b) evidence [16-1] (ksm) [Entry date 08/11/95]
8/2195	--	Docket Modification (Utility) ; motion/evidentiary hearing termed 8/21/95 (bbk) [Entry date 08/21/95]
8/25/95	66	MEMORANDUM by defendant Richard DeCaro — dft requests 20 subpoenas for witnesses — 20 subpoenas issd. (kcm) [Entry date 08/31/95]
8/25/95	--	WRIT issued as to Daniel Basile for September 6, 1995 at 9:00 am before Judge Adelman (kcm) [Entry date 08/31/95]
8/25/95	67	APPLICATION by plaintiff USA for writ of habeas corpus ad prosequendum as to dft Daniel Basile for September 6, 1995 at 9:00 a.m. — writ issd (kcm) [Entry date 08/31/95]
8/29/95	68	MEMORANDUM by defendant Richard DeCaro — dft requests 15 criminal trial subpoenas — 15 subpoenas issd. (kcm) [Entry date 08/31/95]
8/31/95	69	MOTION for order to redact tape recorded conversation between Melanie Enkelmann and Richard DeCaro by Richard DeCaro (lal) [Entry date 09/01/95]
8/31/95	70	MOTION to exclude hearsay statements of co-deft. Daniel Basile by Richard DeCaro (lal) [Entry date 09/01/95]
8/31/95	71	MOTION to exclude hearsay statements of Elizabeth DeCaro by Richard DeCaro (lal) [Entry date 09/01/95]

9/6/95	72	MINUTES: before Mag. Judge Terry I. Adelman Evidentiary Hearing held. Testimony heard. Motions taken under submission. Dft DeCaro released on bond. Dft Basile remanded to custody. court reporter: K. Moore (kcm) [Entry date 09/07/95]
9/6/95	--	MEMORANDUM by defendant Richard DeCaro — dft requests ten criminal subpoenas — 10 subpoenas issued (kcm) [Entry date 09/18/95]
9/7/95	73	RESPONSE by plaintiff USA to motion to exclude hearsay statements of Elizabeth DeCaro [71-1], motion to exclude hearsay statements of co-deft. Daniel Basile [70-1], motion for order to redact tape recorded conversation between Melanie Enkelmann and Richard DeCaro [69-1] (kcm) [Entry date 09/13/95]
9/8/95	74	MOTION for leave to file supplemental motion for severance by Daniel Basile (kcm) [Entry date 09/14/95]
9/8/95	74	RULED DOCUMENT by Mag. Judge Terry I. Adelman granting dft Basile motion for leave to file supplemental motion [74-1] (cc: all counsel, USPT, USP, USM) (kcm) [Entry date 09/14/95]
9/28/95	75	WAIVER of SPEEDY TRIAL fld. by defendant Richard DeCaro (lal) [Entry date 09/29/95]
10/10/95	76	MARSHALL'S RETURN of writ executed executed on 9/15/95 as to Daniel Basile (kms) [Entry date 10/12/95]
10/16/95	77	WAIVER of Speedy Trial fld. by defendant Richard DeCaro (lal) [Entry date 10/17/95]

11/3/95	--	Docket Modification (Utility) terminating attorney Lee T. Lawless for Daniel Basile as to Daniel Basile, as to Daniel Basile Thomas F. Flynn (bbk) [Entry date 11/07/95]
11/3/95	78	WAIVER by defendant Daniel Basile. (bbk) [Entry date 11/07/95]
11/3/95	79	MOTION to continue trial setting by Daniel Basile (bbk) [Entry date 11/07/95]
11/6/95	79	RULED DOCUMENT by Honorable George F. Gunn Jr. granting motion to continue trial setting [79-1] (cc: all counsel, USPT, USP, USM) (bbk) [Entry date 11/07/95]
11/6/95	80	CONTINUANCE per 18:3161 by Honorable George F. Gunn Jr. (cc: all counsel, USPT, USP, USM) (bbk) [Entry date 11/07/95]
11/7/95	81	LETTER from Clerk's office resetting trial from 10/2/95 to January 29, 1996 at 9:00 a.m. CC: counsel, USM, USP, USPT. (bbk) [Entry date 11/07/95]
11/7/95	--	Docket Modification (Utility); jury trial set for 9:00 1/29/96 for Richard DeCaro, for Daniel Basile (bbk) [Entry date 11/07/95]
1/5/96	82	REQUEST by defendant Richard DeCaro for 15 trial subpoenas (lal) [Entry date 01/08/96]
1/16/96	83	LETTER from Clerk's Office resetting trial from January 29, 1996 to MONDAY, February 5, 1996 at 9:00 a.m. (kcm) [Entry date 01/16/96]
1/16/96	--	Docket Modification (Utility) : jury trial reset for 9:00 2/5/96 for Richard DeCaro, for Daniel Basile (kcm) [Entry date 01/16/96]

1/22/96	84	ORDER & MEMORANDUM by Mag. Judge Terry I. Adelman denying motion to exclude hearsay statements of Elizabeth DeCaro [71-1], denying motion to exclude hearsay statements of co-deft. Daniel Basile [70-1], denying motion for order to redact tape recorded conversation between Melanie Enkelmann and Richard DeCaro [69-1], granting motion for discovery and inspection [64-1], denying motion to produce statements [64-2], denying motion to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 for violation of state and federal double jeopardy clauses [56-1], denying motion for severance [54-1], denying motion for severance [53-1], denying motion for disclosure of the identity of informants [52-1], finding the motion for production of electronic surveillance and wire-tapping materials [50-1] moot., finding the motion for order requiring the Govt. to disclose full nature and extent of consideration offered to or sought by the Govt. or its agents on behalf of informants [49-1] moot., granting in part and denying in part motion for disclosure of impeaching information [48-1], granting motion for discovery and production of favorable evidence [47-1], granting motion for discovery [46-1], finding the motion for discovery of statements of co-defts and co-conspirators [45-1] moot., granting motion for pretrial notice of similar act evidence [44-1], granting motion to compel disclosure of evidence subject to suppression under F.R.CR.P. 12(b)(3) [43-1], denying motion for order to transfer case from the district for trial [42-1], denying motion for a bill of particulars [41-1], denying motion to dismiss

count (s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 [40-1], granting in part and denying in part motion for order to require the Govt. to reveal any agreements or concessions with witnesses that may influence their testimony [32-1], granting in part and denying in part motion for order to require the Govt. to reveal any deal, agreement, or understanding with any potential prosecution witness or informer [31-1], denying motion to produce names and addresses of all persons expected to be called as witnesses by the USA at trial [26-1], finding the motion for early production of Jenck's Act materials [25-1] moot., finding the motion to produce investigative reports [24-1] moot., granting in part and denying in part motion for disclosure of impeaching information [23-1], finding the motion to produce copy of transcript of the grand jury testimony or in the alternative to inspect the grand jury minutes [22-1] moot., denying motion to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 [21-1], granting in part and denying in part motion for discovery and inspection [20-1], granting in part, denying in part and finding in part as moot motion for discovery and disclosure [19-1], granting in part and denying in part for disclosure of information pursuant to Brady v. Maryland [18-1], granting motion for order to inspect and video tapes [17-1], granting motion for disclosure of intent of Govt. to use 404(b) evidence [16-l] (cc: all counsel, USPT, USP, USM) (kcm) [Entry date 01/23/96]

1/22/96 84 REPORT AND RECOMMENDATION concerning motion to suppress evidence and state-

ments [51-1], motion to suppress evidence of tangible objects [30-1], motion to suppress statements [29-1], motion to suppress identification [28-1], motion to suppress evidence [27-1] All motions to suppress should be denied by Mag. Judge Terry I. Adelman ; Objection to RR ddl 2/1/96 (cc: all counsel, USPT, USP, USM) (kcm) [Entry date 01/23/96]

1/22/96 -- Docket Modification (Utility) terminating case referral (kcm) [Entry date 01/23/96]

1/22/96 85 MOTION to dismiss count(s) as to Richard ~~DeCaro (1) count (s) 1, 2, 3-7 by Richard DeCaro~~ (jwh) [Entry date 01/23/96] [Edit date 02/15/96]

1/22/96 86 SEALED document (trial subpoenas) by deft. DeCaro. (bbk) [Entry date 01/23/96]

1/23/96 87 REQUEST by defendant Daniel Basile for issuance of subpoenas. 24 subpoenas issued. (bbk) [Entry date 01/24/96]

1/24/96 88 PROPOSED Voir Dire by defendant Richard DeCaro (bbk) [Entry date 01/24/96]

1/25/96 89 NOTICE of intention to offer defense of alibi by defendant Richard DeCaro (bbk) [Entry date 01/26/96]

1/25/96 90 SUPPLEMENTAL (addendum) by Richard DeCaro re motion to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 [85-1], re motion to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 for violation of state and federal double jeopardy clauses [56-1] (bbk) [Entry date 01/26/96]

1/25/96	91	MOTION (Supplemental) for discovery, and for disclosure of "Petit Policy" & decision to seek indictment by Richard DeCaro (bbk) [Entry date 01/26/96]
1/25/96	92	REQUEST by defendant Daniel Basile for issuance of subpoenas. Subpoenas issued. (bbk) [Entry date 01/26/96]
1/25/96	92	SEALED document by defendant Daniel Basile [92-1] (bbk) [Entry date 01/26/96]
1/25/96	93	OBJECTIONS by Richard DeCaro to Report and Recommendation [84-1] (jwh) [Entry date 01/26/96]
1/30/96	94	PROPOSED Voir Dire by plaintiff USA (bbk) [Entry date 01/31/96]
1/30/96	95	PROPOSED Voir Dire Statement by plaintiff USA (bbk) [Entry date 01/31/96]
1/30/96	96	RESPONSE by plaintiff USA to motion for discovery [91-1], motion for disclosure of "Petit Policy" & decision to seek indictment [91-2], motion to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 [85-1] (bbk) [Entry date 01/31/96]
1/31/96	97	SEALED document (trial subpoenas) by defendant Richard DeCaro (bbk) [Entry date 01/31/96]
1/31/96	98	REQUEST by defendant Daniel Basile for issuance of subpoenas. Subpoenas issued. (bbk) [Entry date 01/31/96]
1/31/96	98	SEALED document by defendant Daniel Basile [98-1] (bbk) [Entry date 01/31/96]

2/1/96	99	MOTION in limine relative to deft's. conviction by Daniel Basile (bbk) [Entry date 02/02/96] [Edit date 02/15/96]
2/1/96	100	OBJECTIONS by Daniel Basile to Report and Recommendation [84-1] (bbk) [Entry date 02/02/96]
2/5/6	101	ORDER by Honorable George F. Gunn Jr. denying motion for discovery [91-1], denying motion for disclosure of "Petit Policy" & decision to seek indictment [91-2], granting report and recommendation motion REPORT AND RECOMMENDATION concerning motion to suppress evidence and statements [51-1], motion to suppress evidence of tangible objects [30-1], motion to suppress statements [29-1], motion to suppress identification [28-1], motion to suppress evidence [27-1] [84-1], denying motion to suppress evidence of tangible objects [30-1], denying motion to suppress statements [29-1], denying motion to suppress identification [28-1], denying motion to suppress evidence [27-1] (cc: all counsel, USPT, USP, USM) (bbk) [Entry date 02/05/96]
2/5/96	--	Docket Modification (Utility) terminating motion to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 [85-1], denying motion to suppress evidence and statements [51-1] (bbk) [Entry date 02/05/96]
2/5/96	102	MEMORANDUM in support of motion to dismiss indictment by defendant Richard DeCaro [85-1] (bbk) [Entry date 02/05/96]

2/5/96	103	BRIEF (Trial) by USA (bbk) [Entry date 02/06/96]
2/6/96	104	BRIEF (trial) and response to pltf's. trial brief by Richard DeCaro regarding [103-1] (bbk) [Entry date 02/07/96]
2/6/96	105	MEMORANDUM w/Exhibit A in conjunction with Motion for transfer from District for trial by defendant Richard DeCaro (bbk) [Entry date 02/07/96] [Edit date 02/12/96]
2/7/96	--	MINUTES: before Honorable George F. Gunn Jr. voir dire begins court reporter: Lynne Shrum (bbk) [Entry date 02/23/96]
2/8/96	106	STIPULATION of fact by Richard DeCaro, Daniel Basile, USA (jwh) [Entry date 02/08/96]
2/8/96	--	MINUTES: Jury trial - 2nd day before Honorable George F. Gunn Jr. court reporter: Lynne Shrum. Voir dre of jury continues. Proceedings postponed until tomorrow at 9:30 a.m. (bbk) [Entry date 02/12/96]
2/9/96	107	MEMORANDUM w/Exhibits A-2,A-3,A-4 and A-5 (3 tapes) in support of motion for transfer by defendant Richard DeCaro [105-1] (in separate folder)(bbk) [Entry date 02/09/96]
2/9/96	108	MINUTES: Jury trial - 3rd day before Honorable GeorgeF. Gunn Jr. court reporter: Lynne Shrum. Voir dire continues. Oral motion for change of venue nade by defts. Denied (GFG). (bbk) [Entry date 02/12/96]
2/12/96	109	MINUTES: Jury trial - 4th Day before Honorable GeorgeF. Gunn Jr. court reporter: Teri Hopwood.

Motion for change of venue made by pltf. and defts. Granted (GFG). Jury panel excused. (bbk) [Entry date 02/12/96]

2/12/96 109 MOTION (oral) to change venue by Richard DeCaro, Daniel Basile (bbk) [Entry date 02/12/96]

2/12/96 109 RULED DOCUMENT (orally) by Honorable George F. Gunn Jr. granting motion to change venue [109-1], terminating motion in limine relative to deft's. conviction [99-1] (bbk) [Entry date 02/12/96]

2/12/96 110 MEMORANDUM w/two photographs by defendant Richard DeCaro [107-1], [105-1] (bbk) [Entry date 02/12/96]

2/12/96 111 REQUEST by defendant Richard DeCaro for subpoenas to remain in force. So Ordered (GFG) (bbk) [Entry date 02/12/96]

2/12/96 112 ORDER by Honorable George F. Gunn Jr. case reassigned to Honorable Stephen N. Limbaugh (cc: all counsel, USPT, USP, USM) (bbk) [Entry date 02/12/96]

2/13/96 113 INTRA District transfer from the Division of Eastern District as to Richard DeCaro, Daniel Basile [case #: 4:95cr182 GFG] (arl) [Entry date 02/20/96]

2/13/96 113 ORDER by Honorable Stephen N. Limbaugh IT IS HEREBY ORDERED that the venue of this case is TRANSFERRED to the Southeastern Division of the Eastern district of Missouri in Cape Girardeau, MO. IT IS FURTHER OR-

DERED that the case is set for trial in Cape Girardeau on 2/26/96; jury trial set for 2/26/96 for Richard DeCaro, for Daniel Basile (cc: all counsel, USPT, USP, USM) (arl) [Entry date 02/20/96]

2/14/96 114 RETURN of subpoena in a Criminal Case to: KDNL - Channel 30 (Custodian of Records) Service accepted by: Mary Kay Peters (arl) [Entry date 02/20/96]

2/14/96 115 RETURN of subpoena in a criminal case to: KMOV-Channel 4 (Custodian of Records) Served to: Bernard Gerwell (arl) [Entry date 02/20/96]

2/14/96 116 RETURN of subpoena in a criminal case to: KTVI - Channel 2 (Custodian of Records) Served upon: Janet Barrett (arl) [Entry date 02/20/96]

2/14/96 117 RETURN of subpoena in a criminal case to: KSDK - Channel 5 (Custodian of Records) Served upon: Georgia Williams (arl) [Entry date 02/20/96]

2/14/96 118 RETURN of subpoena in a criminal case to: St Louis Post Dispatch (Custodian of Records) Served upon: Mike Hammett (arl) [Entry date 02/20/96]

2/14/96 119 RETURN of subpoena in a criminal case to: Ralph Vitiello Service accepted by: Ralph Viteillo (arl) [Entry date 02/20/96]

2/20/96 120 ORDER by Honorable Stephen N. Limbaugh denying motion to dismiss count(s) as to Richard DeCaro (1) count(s) 1, 2, 3-7 for the reasons set out in the memorandum in opposition to the

motion filed by the govt.[85-1] (cc: all counsel, USPT, USP, USM) (csg) [Entry date 02/22/96]

2/21/96 121 MOTION to dismiss indictment, all counts as to Daniel Basile (2) count (s) 1, 2, 4, 6 by Daniel Basile with attached memorandum in support. (bdc) [Entry date 02/22/96] [Edit date 02/22/96]

2/22/96 121 RULED DOCUMENT by Honorable Stephen N. Limbaugh denying motion to dismiss indictment, all counts as to Daniel Basile (2) count(s) 1, 2, 4, 6 [121-1] LEAVE TO FILE GRANTED, MOTION DENIED. SNL, 2/22/96. (cc: all counsel, USPT, USP, USM) (bdc) [Entry date 02/22/96]

2/23/96 122 MOTION in limine by USA (dlb) [Entry date 02/23/96]

2/23/96 123 RESPONSE TO DEFENDANT BASILE'S MOTION TO DISMISS THE INDICTMENT by plaintiff USA regarding [121-1] (dlb) [Entry date 02/23/96]

2/26/96 124 JURY TRIAL DAY ONE MINUTES: before Honorable Stephen N. Limbaugh: Attorneys present for the Govt: Thomas Dittmeier and Howard Marcus; attorneys for deft DeCaro: N. Scott Rosenblum and Susan Kister; for deft Basile: Thomas Flynn; voir dire begins and is concluded, motion by the Govt is sustained in open Court; jury impaneled proceedings commenced at 10:30 a.m. and concluded at 7:30 p.m.; court reporter: Lynn Shrum; proceedings postponed until tomorrow at 9:30 a.m. (bdc) [Entry date 03/05/96]

2/27/96 125 MEMORANDUM of Law by plaintiff USA in support of the admissability of certain statements

relevant to the proof of the conspiracy in this cause. I. Conversation between Alan Decker and Deft Basile prior to March 11, 1992; GRANTED, SNL, 3/1/96. II. Basile's statement on 3/11/92 DENIED, SNL, 3/1/96. III. Two statements by deft Basile to Dennis Williamson 3/12/96, GRANTED, SNL, 3/1/96. (bdc) [Entry date 03/05/96]

2/27/96 126 JURY TRIAL DAY TWO MINUTES: before Honorable Stephen N. Limbaugh: for the Govt: Thomas Dittmeier and Howard Marcus; for deft DeCaro: N. Scott Rosenblum and Susan Kister; for deft Basile: Thomas Flynn. Parties present for jury trial, jury and two alternate jurors empaneled and sworn; Govt.'s evidence commenced but not concluded; court proceedings began at 9:50 a.m. and concluded at 5:00 p.m.; proceedings postponed until tomorrow at 9:30 a.m.; court reporter: Lynn Shrum. (bdc) [Entry date 03/05/96] [Edit date 03/05/96]

2/28/96 127 JURY TRIAL DAY 3 MINUTES: before Honorable Stephen N. Limbaugh: Parties present for Jury trial; attys for the Govt: Thomas Dittmeier and Howard Marcus; for Deft DeCaro: N. Scott Rosenblum and Susan Kister, for Deft Basile: Thomas Flynn; Govt.'s evidence resumed but not concluded; Proceedings commenced at 9:45 a.m. and concluded at 4:20 p.m.; proceedings postponed until tomorrow at 9:30 a.m. court reporter: Lynn Schrum. (bdc) [Entry date 03/05/96]

2/29/96 128 JURY TRIAL DAY 4 MINUTES: before Honorable Stephen N. Limbaugh: parties present for

jury trial; Attys for the Govt: Thomas Dittmeier and Howard Marcus; Attys for the deft DeCaro: N. Scott Rosenblum and Susan Kister; for the Deft Basile: Thomas Flynn. Govt.'s evidence resumed but not concluded. Proceedings commenced at 9:45 a.m. and concluded at 4:30 p.m.; proceedings postponed until tomorrow at 9:30 a.m.; court reporter: Lynn Shrum. (bdc) [Entry date 03/05/96]

3/1/96 129 JURY TRIAL DAY 5 MINUTES: before Honorable Stephen N. Limbaugh: parties present for jury trial; attorneys for the Govt: Thomas Dittmeier and Howard Marcus; attorneys for the Deft DeCaro: N. Scott Rosenblum and Susan Kister; attorney for the Deft Basile: Thomas Flynn. Govt.'s evidence resumed but not concluded; Proceedings commenced at 9:45 a.m. and Concluded at 5:05 p.m.; proceedings postponed until Monday at 9:30 a.m.; court reporter: Lynn Schrum. (bdc) [Entry date 03/05/96]

3/1/96 130 REQUEST, memorandum for clerk, by defendant Richard DeCaro for issuance of 10 Criminal Subpeonas for trial; 10 criminal subpoenas were issued 3/1/96. (bdc) [Entry date 03/05/96]

3/4/96 131 JURY TRIAL DAY 6 MINUTES: before Honorable Stephen N. Limbaugh: Parties present for jury trial; Attys for the Govt: Thomas Dittmeier and Howard Marcus; attys for the Deft DeCaro: N. Scott Rosenblum and Susan Kister; for Deft: Basile: Thomas Flynn. Govt's evidence resumed and concluded. Oral motions of each Defts for judgment of acquittal at close of Govt's case made under each of the counts, argued, and

denied; Defts were given 10 days after the verdict to file written motions. Deft DeCaro's evidence commenced but not concluded. Proceedings commenced at 9:45 a.m. and concluded at 5:30 p.m. proceedings postponed until tomorrow at 9:30 a.m.; court reporter: Sharon Anielak. (bdc) [Entry date 03/05/96]

3/5/96 132 JURY TRIAL DAY 7 MINUTES: before Honorable Stephen N. Limbaugh: Parties present for jury trial; attys for the Govt: Thomas Dittmeier and Howard Marcus; attys for the Deft DeCaro: N. Scott Rosenblum and Susan Kister, for the Deft Basile: Thomas Flynn. Deft DeCaro's evidence resumed but not concluded. Proceedings commenced at 9:50 a.m. and Concluded at 5:30 p.m.; proceedings postponed until 9:30 a.m. tomorrow. Court reporter: Patti Dunn-Wecke. (bdc) [Entry date 03/06/96]

3/6/96 133 JURY TRIAL DAY 8 MINUTES: before Honorable Stephen N. Limbaugh: Parties present for jury trial. Attys for the Govt: Thomas Dittmeier and Howard Marcus; attys for the Deft DeCaro: N. Scott Rosenblum and Susan Kister; for the Deft Basile: Thomas Flynn. Deft DeCaro's evidence resumed and concluded. Deft Basile's evidence commenced and concluded. Oral motion of Defts DeCaro and Deft Basile for judgment of acquittal at the close of all the evidence made, and denied. Defts are given 10 days from the date of the verdict to to file written motions. Proceedings commenced at 9:45 a.m. and concluded at 2:45 p.m. and are postponed until 9:30 a.m. tomorrow; court reporter: Patti Dunn-Wecke. (bdc) [Entry date 03/06/96]

3/7/96 134 MINUTES: before Honorable Stephen N. Limbaugh: Parties present for jury trial; Closing arguments of counsel made; jury charged and retires to consider its verdict; ordered that alternate jurors (2) be excused; jury returns finding Richard DeCaro (1) count(s) 1, 2, 3-7, Daniel Basile (2) count(s) 1, 2, 4, 6 guilty ; objection to PSR set for 6/6/96 for Richard DeCaro, for Daniel Basile, jury trial held on 3/7/96; sentencing hearing set for 1:00 6/28/96 Richard DeCaro, jury trial held on 3/7/96; sentencing hearing set for 1:00 6/27/96 for Daniel Basile, dft DeCaro remanded to custody of USM court reporter: Patti Dunn-Wecke (csg) [Entry date 03/11/96]

3/7/96 135 VERDICT (2) as to Richard DeCaro, Daniel Basile (csg) [Entry date 03/11/96]

3/7/96 136 Presentence report order form issued for defendant Richard DeCaro cc:Probation (csg) [Entry date 03/11/96]

3/7/96 137 Presentence report order form issued for defendant Daniel Basile cc: Probation (csg) [Entry date 03/11/96]

3/7/96 138 JURY Instructions given, and instructions submitted and refused filed (csg) [Entry date 03/11/96]

3/7/96 139 ORDER by Honorable Stephen N. Limbaugh: IT IS HEREBY ORDERED that the jury be kept together, and the meals shall be furnished at the expense of the United States. (cc: all counsel, USPT, USP, USM, financial w/copy of bill) (csg) [Entry date 03/11/96]

3/11/96 140 LETTER from SNL to counsel re sentencing setting (csg) [Entry date 03/14/96]

3/13/96 141 ORDER by Honorable Stephen N. Limbaugh: sentencing hearing reset for 1:00 6/21/96 for Richard DeCaro in Court 3A in St. Louis (cc: all counsel, USPT, USP, USM) (csg) [Entry date 03/15/96] [Edit date 03/15/96]

3/13/96 142 ORDER by Honorable Stephen N. Limbaugh : sentencing hearing reset for 1:00 6/20/96 for Daniel Basile in Court 3A in St. Louis (cc: all counsel, USPT, USP, USM) (csg) [Entry date 03/15/96] .

3/26/96 -- FINANCIAL ENTRY Pd 3/26/96, ck #194666, $74.17 to Blimpie for jury meal [139-1] (csg) [Entry date 03/28/96]

5/22/96 143 ACCEPTANCE TO PSR on dft Richard DeCaro by USA; objection to PSR deadline met on 5/22/96 (csg) [Entry date 05/22/96]

5/22/96 144 ACCEPTANCE TO PSR on dft Basile by USA; objection to PSR deadline met on 5/22/96 (csg) [Entry date 05/22/96]

5/28/96 145 ACCEPTANCE TO PSR by Richard DeCaro; objection to PSR deadline met on 5/28/96 (mrs) [Entry date 05/31/96]

6/19/96 146 ACCEPTANCE TO PSR by Daniel Basile; objection to PSR deadline met on 6/19/96 (arl) [Entry date 06/20/96] [Edit date 06/25/96]

6/20/96 147 MINUTES: before Honorable Stephen N. Limbaugh sentencing hearing held on 6/20/96 court reporter: Patti Dunn Wecke; proceedings

started: 1:10 p.m. - ended: 1:35 p.m. (csg) [Entry date 06/25/96] [Edit date 06/25/96]

6/20/96 148 JUDGEMENT by Honorable Stephen N. Limbaugh as to Daniel Basile sentencing Daniel Basile (2) count(s) 1, 2 , 4 , 6 . Defendant sentenced to Life imprisonment as to Ct. 2, 60 months as to Cts. 1, 4 and 6, all terms to run concurrently for an aggregate term of life. This term shall also run concurrently with dft's sentence imposed on 7/1/94 in St. Charles County. Term of three years supervised release on each of counts 1,2,4 & 6, to run concurrently for an aggregate term of S.R. of 3 years; S.A. of $200.00, terminating party Daniel Basile (cc: all counsel, USPT, USP, USM) (csg) [Entry date 06/25/96]

6/20/96 -- Docket Modification (Utility) - as to count 1 sentencing Daniel Basile (2) count(s) 1. Deft sentenced to Life imprisonment on Count 2, 60 months on each of counts 1, 4 & 6 to run concurrently, for an aggregate term of Life; S.R. - three years on each of counts 1, 2, 4 & 6 to run concurrently for an aggregate term of 3 years S.R.; S.A. - $200.00 (csg) [Entry date 06/25/96]

6/20/96 149 PRESENTENCE Report on Daniel Basile (csg) [Entry date 06/25/96]

6/20/96 149 SEALED document - PSR on dft Basile [149-1] (csg) [Entry date 06/25/96]

6/21/96 150 MINUTES: before Honorable Stephen N. Limbaugh sentencing hearing held on 6/21/96 court reporter: Patti Dunn Wecke; proceedings started: 9:35 a.m. - ended: 9:40 a.m. (csg) [Entry date 06/25/96]

6/21/96 151 JUDGEMENT by Honorable Stephen N. Limbaugh as to Richard DeCaro sentencing Richard DeCaro (1) count(s) 1, 2 , 3 -7 . Deft sentenced to the Bureau of Prisons for a term of LIFE. This term consists of life as to Count 2, and 60 months as to each of Counts 1, 3, 4, 5, 6 and 7, such terms to run concurrently, for an aggregate term of imprisonment of life. Supervised release for a term of 3 years as to counts 1-7, all such terms to run concurrently, for an aggregate term of S. R. of 3 years. S. A. - $350.00, case terminated (cc: all counsel, USPT, USP, USM) (csg) [Entry date 06/27/96]

6/21/96 152 PRESENTENCE Report on Richard DeCaro (csg) [Entry date 06/27/96]

6/21/96 152 SEALED document - PSR on dft DeCaro [152-1] (csg) [Entry date 06/27/96]

6/21/96 153 CONDITIONS of Probation and Supervised Release by USP and by Richard DeCaro (csg) [Entry date 06/27/96]

6/21/96 154 APPEAL Notice to USCA by defendant Daniel Basile regarding [148-3] fees ifp forwarded to Appeals Unit on June 21, 1996 (csg) [Entry date 06/27/96]

6/25/96 155 APPEAL Notice to USCA by defendant Richard DeCaro regarding [151-3] fees ifp forwarded to Appeals Unit on June 25, 1996 (csg) [Entry date 6/27/96]

6/27/96 156 MOTION to appeal in forma pauperis as to defendant Richard DeCaro by Richard DeCaro (csg) [Entry date 06/27/96]

6/27/96 156 RULED DOCUMENT by Honorable Stephen N. Limbaugh granting motion to appeal in forma pauperis as to defendant Richard DeCaro [156-1] (cc: all counsel, USPT, USP, USM) (csg) [Entry date 06/27/96]

6/27/96 -- DELIVERED TO USCA (as to dft Basile) - 1 criminal appeal cover sheet, 2 certified copies each of NOA, Judgment, and clerk's docket entries. cc: NOA to USPT, USP, USM, Judge, Court Reporter cc: NOA and clerk's docket entries to parties (csg) [Entry date 06/27/96]

6/27/96 -- DELIVERED TO USCA (as to dft DeCaro) - 1 criminal appeal cover sheet, 2 certified copies each of NOA, Judgment, and clerk's docket entries. cc: NOA to USPT, USP, USM, Judge, Court Reporter cc: NOA and clerk's docket entries to parties (csg) [Entry date 06/27/96]

APPENDIX G

EXHIBIT G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA
V.
RICHARD DECARO

[Filed: June 21, 1996]

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number 1:96CR005SNL
N. Scott Rosenblum
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)_____

☐ pleaded nolo contendere to count(s)
which was accepted by the court._____

☒ was found guilty on count(s) ALL COUNTS (1-7)
after a plea of not guilty.

Title & Section
18:1958-7471.F & 18:371

Nature of Offense
CONSPIRACY TO COMMIT MURDER FOR HIRE

Date Offense Concluded
3/31/92

Count Number(s)
1

Title & Section
18:1958 and 2

Nature of Offense
USE OF INTERSTATE COMMERCE DURING THE COMMISSION OF MURDER FOR HIRE

Date Offense Concluded
3/31/92

Count Number(s)
2

Title & Section
18:1341.F

Nature of Offense
MAIL FRAUD

Date Offense Concluded
3/31/92

Count Number(s)
3 - 7

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines,

restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 491-70-0971

Defendant's Date of Birth: 01/28/62

Defendant's USM No.: 24317-044

Defendant's Residence Address:
1388 Hampton Road
St. Charles, Missouri 63303

Defendant's Mailing Address:
1388 Hampton Road
St. Charles, Missouri 63303

06/21/96
Date of Imposition of Judgment

/s/ Stephen N. Limbaugh
Signature of Judicial Officer
STEPHEN N. LIMBAUGH
UNITED STATES
DISTRICT COURT JUDGE
EASTERN DISTRICT
OF MISSOURI
Name & Title of Judicial Officer

06/21/96
Date

A True Copy of the Original
Filed 6/21/96
Attest: Robert St. Vrain, Clerk
By: /s/Cathy Gould
Dated: 6/27/96

DEFENDANT: RICHARD DECARO

CASE NUMBER: 1:96CR5 SNL

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for total term of LIFE.

This term consists of life as to count 2, and 60 months as to each of counts 1, 3, 4, 5, 6, and 7, such terms to run concurrently, for an aggregate term of imprisonment of life.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for his district:

- ☐ at _____ a.m./p.m. on _____.
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

_____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

BY_____
Deputy U.S. Marshal

DEFENDANT: RICHARD DECARO

CASE NUMBER: 1:96CR5 SNL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS:

This term consists of terms of three years as to counts 1-7, all such terms to run concurrently, for an aggregate term of supervised release of three years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☐ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions of the attached page (if indicated below).

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: RICHARD DECARO

CASE NUMBER: 1:96CR5 SNL

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$350.00	$	$

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . $_____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $_____.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

The determination of restitution is deferred in a case brought under Chapters 109A, 100, 110A and 113A of Title 18 offenses committed on or after 09/13/1994, until _____. An Amended Judgment in a Criminal Case.

☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	****Total Amount of Loss**	**Amount of Restitution Ordered**	**Priority Order or Percentage Payment**
Totals$	_____	$ _____	

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113 A of Title 18 for offenses committed on or after September 13, 1994.

DEFENDANT: RICHARD DECARO

CASE NUMBER: 1:96CR5 SNL

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ in full immediately; or

B ☐ $_____ immediately; balance due (in accordance with C, D, or E); or

C ☐ not later than _____; or

D ☐ in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E ☐ in _____ (*e.g. equal, weekly, monthly, quarterly*) installments of $_____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above. If this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States Courts National Fine Center, Administrative Office of the United States Court, Washington, DC 20544, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. If the National Fine Center is not operating in this district, all criminal monetary penalty payments are to be made as ordered by the court, the probation officer, or the United States attorney.

DEFENDANT: RICHARD DECARO

CASE NUMBER: 1:96CR5 SNL

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary).

Guideline Range Determined by the Court:

Total Offense Level: _____

Criminal History Category: _____

Imprisonment Range: _____ to _____ months

Supervised Release Range: _____ to _____ years.

Fine Range: $_____ to$ _____

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ _____

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow

for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

APPENDIX H

EXHIBIT H

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-2744

United States of America,
Appellee,
v.
Daniel Basile,
Appellant.

No. 96-2746

United States of America,
Appellee,
v.
Richard DeCaro,
Appellant.

Appeals from the United States District Court for the Eastern District of Missouri.

Submitted: January 16, 1997

Filed: April 1, 1997

Before BOWMAN and MURPHY, Circuit Judges, and KYLE,[1] District Judge.

BOWMAN, Circuit Judge.

Richard DeCaro and Daniel Basile appeal from the judgments of the District Court[2] on jury verdicts finding them guilty on

[1]The Honorable Richard H. Kyle, United States District Judge for the District of Minnesota, sitting by designation.

[2]The Honorable Stephen N. Limbaugh, United States District Judge for the Eastern District of Missouri.

charges of murder-for-hire, conspiracy to commit murder-for-hire, and mail fraud. We affirm.

I.

This case arises from the execution-style murder of Elizabeth DeCaro, wife of Richard DeCaro, on March 6, 1992. She was found shot to death that Friday night in the kitchen of her home in St. Charles, Missouri (a suburb of St. Louis), the gun barrel having been pressed up against the back of her neck and fired twice. Her husband, who recently had been having an extramarital affair with his secretary, had taken the couple's four children (and the family dog, which was not known to travel with the family because it was very excitable around strangers) to the Lake of the Ozarks in south Missouri for the weekend. He had told Elizabeth that he wanted a "daddy's weekend" alone with the children. DeCaro and the children left St. Charles shortly after noon on March 6, while Elizabeth was still at work. Later that afternoon, Elizabeth was murdered and the family's Blazer was stolen from the garage of the home. These incidents followed by about a month the theft of the family van from the DeCaro home in the early morning hours of February 8, 1992; the van was found in southeast Missouri and had been burned. DeCaro reported that various items were missing from the van, including the garage door opener for the DeCaro home.

A few days after the murder, first Basile and then DeCaro were arrested on state charges of murder. In May 1994, Basile was tried as the hit man, was convicted, and was sentenced to death. His direct appeal in the state proceeding has been submitted to the Missouri Supreme Court. In a separate trial in September 1994, DeCaro was acquitted on state murder charges.

In May 1995, a federal grand jury indicted Basile and DeCaro on murder-for-hire and mail fraud charges. Specifically, both

men were charged with use of the mail or facilities in interstate commerce with intent to commit murder-for-hire, 18 U.S.C. § 1958 (1988 & Supp. IV 1992); conspiracy to commit murder-for-hire, 18 U.S.C. §§ 1958, 371 (1988 & Supp. IV 1992)); and mail fraud, 18 U.S.C. § 1341 (Supp. IV 1992).[3] After a joint jury trial both men were found guilty of all charges against them and each was sentenced to life in prison.

DeCaro and Basile both raise the same three issues on appeal. They claim this federal prosecution, following as it did the state prosecution, is a violation of their rights under the Double Jeopardy Clause of the Constitution. They also argue that the District Court abused its discretion in denying their motions for separate trials. Finally, both challenge the court's denial of their motions for judgment of acquittal, and contend that there was insufficient evidence that interstate facilities were used in furtherance of the murder-for-hire scheme.

II.

DeCaro and Basile argue that they were twice put in jeopardy for the same crime in violation of their constitutional rights, *see* U.S. Const. Amend. V, and that the District Court erred in refusing to dismiss the indictment on those grounds. We review de novo. *See United States v. McMasters*, 90 F.3d 1394, 1401 (8th Cir. 1996), *cert. denied*, 117 S. Ct. 718, 783 (1997).

A.

It has long been the law under the doctrine known as dual sovereignty that federal prosecution following state prosecution

[3]Basile was charged with and found guilty of two counts of mail fraud based on the filing of fraudulent insurance claims for the loss of the two DeCaro vehicles. DeCaro was charged with and found guilty of those two counts plus three additional counts of mail fraud based on other fraudulent insurance claims filed for the loss of personal property stolen from the DeCaro home at the time of Elizabeth's murder and on a claim filed on a policy insuring Elizabeth's life.

"of the same person for the same acts" does not violate the defendant's criminal rights. *Abbate v. United States*, 359 U.S. 187, 194 (1959); *see also United States v. Halls*, 40 F.3d 275, 277-78 (8th Cir. 1994), *cert. denied*, 115 S. Ct. 1721 (1995). According to the tenets of dual sovereignty, each sovereign derives its power from a different constitutional source, so both may prosecute and punish the same individual for the same act. See Abbate, 359 U.S. at 193-94. Basile acknowledges that his federal convictions "do not appear to offend the double jeopardy clause of the Fifth Amendment under current Supreme Court law." Brief of Basile at 31. DeCaro, on the other hand, would have this Court decide that, because federal prosecution for the murder of Elizabeth DeCaro followed his acquittal on state charges for the same act, "the purpose [of the federal prosecution] is improper and the prosecution should be quashed." Brief of DeCaro at 43. We disagree.

The Supreme Court has created an exception to the dual sovereignty doctrine, concluding that a state prosecution will be deemed unconstitutional when "the state prosecution was a sham and a cover for a federal prosecution, and thereby in essential fact another federal prosecution." *Bartkus v. Illinois*, 359 U.S. 121, 124 (1959). Here DeCaro argues the converse: that the federal government was used as a "tool" by state prosecutors after the state prosecution of DeCaro failed, in order to advance a state interest—the conviction of DeCaro for the murder of his wife—where the state could not legally do so itself. See *United States v. Talley*, 16 F.3d 972, 974 (8th Cir. 1994). As a legal proposition, DeCaro's claim requests an extension of *Bartkus*, but he directs us to no opinion wherein this Court has held that the *Bartkus* exception applies when it is the federal prosecution that follows the state prosecution. We acknowledge, however, that other panels of this Court have assumed, without squarely deciding, that a *Bartkus*-type exception applies to a situation such as we have here. *See, e.g., United States v. Williams*, 104 F.3d 213, 216 (8th Cir. 1997); *Halls*, 40 F.3d at 278.

Because the question was not briefed and argued, and because it is not necessary to our holding today, we do not decide how far *Bartkus* may be extended. For even if DeCaro's claim properly is regarded as falling within the *Bartkus* exception to the dual sovereignty doctrine, the claim fails for lack of factual foundation. DeCaro has not directed this Court to anything in the record that supports his claim of collusion between the two sovereigns. Indeed, his claim is based on little more than chronology: he was acquitted on state charges, and then later he was tried on federal charges arising from the same events. But it would take far more than mere chronology of this sort to render the federal government a "tool" of the state, or the federal prosecution "a sham and a cover" for a *de facto* state prosecution.

DeCaro further asserts that the federal prosecution must have been manipulated by the state because the prosecution was for "an unremarkable case of spousal murder" and "a garden variety contract killing" with "questionable" federal interest. Brief of DeCaro at 44. We disagree. While contract killing, standing alone, may not be a federal crime, it may become such when its perpetration involves the use of the mail or facilities in interstate commerce. The independence and importance of the federal interest in protecting the channels of interstate commerce from the taint of crime is unaffected by DeCaro's previous acquittal in state court; it remains just as important and worthy of vindication after the state trial as it was before. "[T]he federal government had an interest, independent of any state interest, to ensure that an individual who is believed to have violated a federal statute is prosecuted for that violation." *Talley*, 16 F.3d at 974.

We hold that the dual sovereignty doctrine is fully applicable in this case and that DeCaro's double jeopardy claim therefore lacks merit.

B.

Both DeCaro and Basile argue that the United States Attorney in this case nevertheless violated the constitutional prohibition against double jeopardy by failing to follow an internal United States Department of Justice (DoJ) policy concerning duplicative and successive prosecution by the federal government. Known as the *Petite* policy for the case wherein the Supreme Court first described it, *see Petite v. United States*, 361 U.S. 529, 531 (1960) (per curiam), it "was formulated by the Justice Department in direct response to" the opinions in *Bartkus* and *Abbate*, *Rinaldi v. United States*, 434 U.S. 22, 28 (1977) (per curiam). Under the policy, a United States attorney may not prosecute a person in federal court "if the alleged criminality was an ingredient of a previous state prosecution against that person" unless the federal prosecution "is specifically authorized in advance by the [DoJ] itself, upon a finding that the prosecution will serve 'compelling interests of federal law enforcement.'" *Thompson v. United States*, 444 U.S. 248, 248 (1980) (per curiam). DeCaro and Basile argue that the federal government had no "compelling interests" to be served here.

We are not convinced that the federal prosecution in this case failed to meet the "compelling interests" requirement of the *Petite* policy. We need not and do not decide the question, however, because the *Petite* policy is "not constitutionally mandated," *Rinaldi*, 434 U.S. at 29, and otherwise "confers no substantive rights on the accused," *United States v. Moore*, 822 F.2d 35, 38 (8th Cir. 1987) (per curiam). Thus the DoJ's implementation of the policy "cannot form the basis of a claim [by a defendant] that the prosecution was improper." *United States v. Lester*, 992 F.2d 174, 176 (8th Cir. 1993). Further, if subsumed in the defendants' argument is the contention that the DoJ improperly waived the policy here, we are without authority to review such a DoJ decision "because the *Petite* policy is an internal administrative policy." *United States v. Kummer*, 15 F.3d 1455, 1461 (8th Cir. 1994).

Notwithstanding this Court's continuing affirmation that review of alleged DoJ *Petite* policy violations is not available unless sought by the government itself, DeCaro and Basile argue that we should revisit the issue and adopt the reasoning of a concurrence in an Eighth Circuit opinion that predates all of the cases cited above. *See Delay v. United States*, 602 F.2d 173, 179 (8th Cir. 1979) (Heaney, J., concurring) (suggesting that *Petite* policy "should be enforceable by a defendant in an appropriate case"), *cert. denied*, 444 U.S. 1012 (1980). It is clear, however, that this is not the direction in which the Court is headed. *See, e.g., Kummer*, 15 F.3d at 1461 (opinion of the Court by Heaney, J.). And in any event, as a panel we are without authority to overrule precedents established by other panels of this Court; that can be accomplished only by the Court sitting *en banc*. *See United States v. Knight*, 96 F.3d 307, 310 (8th Cir. 1996).

III.

DeCaro and Basile also argue that the District Court erred in denying their motions for severance of their trials [4] We will not reverse on this ground unless we find that the denial of severance

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[4]The government argues that this claim was not preserved for review by either DeCaro or Basile because neither renewed his motion for severance at the close of the government's case or at the end of trial. (DeCaro did renew his motion at sentencing, but by then it was too late to preserve the issue for review.) Therefore, the government contends, we should review the District Court's denial of the severance motions only for plain error. *See United States v. Bordeaux*, 84 F.3d 1544, 1547 (8th Cir. 1996). In his reply brief, DeCaro suggests that the District Court granted him a "continuing motion." Reply Brief of DeCaro at 3. As we read the transcript, however, we think it clear that the court granted the defendants continuing objections to evidentiary rulings, not a "continuing motion" for severance. See Trial Transcript at 1-3 ("The requests will be denied with the exception that the *objections that are made* can be continuing and can apply not only to the opening statement of the government but to the testimony of government as well.") (emphasis added). In any event, our review, whether for plain error or for an abuse of discretion, produces the same result.

was an abuse of discretion resulting in "severe or compelling prejudice" to the accused. *United States v. Melina*, 101 F.3d 567, 571 (8th Cir. 1996) (quoting *United States v. Koskela*, 86 F.3d 122, 126 (8th Cir. 1996)).

"There is a preference in the federal system for joint trials of defendants who are indicted together." *Zafiro v. United States*, 506 U.S. 534, 537 (1993). A joint trial is especially compelling when the defendants are charged as co-conspirators, as is the case here. *See United States v. Warfield*, 97 F.3d 1014, 1018 (8th Cir. 1996), *cert. denied*, 117 S. Ct. 1119 (1997); *Koskela*, 86 F.3d at 126. But whether or not the codefendants also are charged as co-conspirators, "[t]he presumption against severing properly joined cases is strong." *United States v. Delpit*, 94 F.3d 1134, 1143 (8th Cir. 1996). DeCaro and Basile claim, however, that they presented antagonistic defenses, so that trying them together was an abuse of the trial court's discretion and resulted in the necessary prejudice to each to warrant new trials. We disagree.

In the first place, we are not persuaded that the two defenses are properly characterized as antagonistic. DeCaro, who testified at the trial, claimed he hardly knew Basile, and denied any participation in the vehicle thefts or the murder. His strategy was to cast blame on Craig Wells, who was an employee at the Amoco station where DeCaro worked as service manager and who is a relative—of sorts—of Basile .[5] In support of his theory that Wells may have been involved, DeCaro adduced testimony that Wells had access to the DeCaro vehicle keys and that Wells was a known liar. DeCaro claimed Wells knew of DeCaro's plans to be out of town on the day of the murder, and there was testimony from one of DeCaro's witnesses that Wells was not at

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[5]Wells's stepmother was the foster mother of Doug Meyer, Basile's half brother. Wells and Basile referred to each other as "brother," and some of their acquaintances knew them as brothers.

work at the station during the time when the murder may have been committed. The jury could have drawn the inference that Wells and Basile were the co-conspirators, instead of DeCaro and Basile, with DeCaro making the case against Wells and the government making the case against Basile. But it is clear from the transcript that DeCaro's counsel did not assume a role as prosecutor by attempting to prove Basile guilty of the crimes charged. We do not suggest that DeCaro presented a defense to the government's case against Basile, but he made no concerted effort to depict Basile as the perpetrator of the crimes with which DeCaro himself was charged, to the exclusion of all other possible suspects.

As for Basile, a defense theory was not apparent from the witnesses he called. Basile did not testify in his own defense and called only two witnesses, both of whom were emergency medical personnel who attended Elizabeth DeCaro at the murder scene and testified as to her condition. But Basile and DeCaro claim that Basile did have a "defense," and that it was laid out by Basile's counsel in his opening statement and closing argument. In his comments to the jury, counsel conceded that Basile stole the DeCaro vehicles, but he argued against the prosecution theory that Basile murdered Elizabeth DeCaro, whether with or without the collusion of her husband. It is clear, however, that during the evidentiary portion of the trial, Basile conceded nothing. From the trial transcripts it is apparent that Basile's counsel closely cross-examined the witnesses called by DeCaro, including DeCaro himself, as well as those witnesses called by the government, primarily to undermine the government's case asto Basile's involvement in the murder, not to point an accusing finger at DeCaro.

But even if DeCaro's and Basile's defenses were mutually antagonistic, we would not send the case back to the District Court for new trials. "Mutually antagonistic defenses are not prejudicial *per se*," *Zafiro*, 506 U.S. at 538, and even blame-

shifting on the part of the defendants "is not a sufficient reason for severance," *United States v. Bordeaux*, 84 F.3d 1544, 1547 (8th Cir. 1996). "[C]o-defendants are often hostile to one another, and one will try frequently to 'point the finger,' to shift the blame, or to save himself at the expense of the other." *Delpit*, 94 F.3d at 1143. Such tactics rise to the level of antagonistic defenses requiring severance "only when 'there is a danger that the jury will unjustifiably infer that *this conflict alone demonstrates that both are guilty*.'" *Id.* (citations to quoted cases omitted) (emphasis in *Delpit*). Any conflict in the evidence presented at this trial does nothing of the kind, but simply is indicative at most that each defendant was attempting to save his own skin by diverting the jury's attention to the other.

To demonstrate the severe or compelling prejudice necessary to show that the court abused its discretion in denying severance, "a defendant must show that his defense was irreconcilable with that of the codefendant or that the jury was unable to compartmentalize the evidence." *Bordeaux*, 84 F.3d at 1547. As demonstrated by our discussion above, we do not believe that the defenses of DeCaro and Basile (to whatever extent Basile actually put on a defense) were so antagonistic as to be irreconcilable. Because there was no serious finger-pointing by the defendants toward one another during the evidentiary phase of the trial, notwithstanding some desperation blame-shifting by counsel in closing arguments, the jury in its deliberations might have bought into DeCaro's defense, or Basile's "defense," or both—or neither. Further, having reviewed the entire transcript, we are satisfied that the jury could not have had any difficulty compartmentalizing the evidence against each defendant. There were only two defendants, the charges varied little between DeCaro and Basile and were not complicated, and the issues were not complex. We conclude that neither DeCaro nor Basile has met his heavy burden of demonstrating the prejudice re-

quired for reversal. *See United States v. McGuire*, 45 F.3d 1177, 1187 (8th Cir.), *cert. denied*, 115 S. Ct. 2558 (1995).[6]

IV.

Both DeCaro and Basile argue that the evidence was insufficient to prove the necessary interstate activity to support federal charges and that the District Court therefore erred in denying their motions for acquittal. DeCaro and Basile do not claim that the evidence was insufficient to prove that DeCaro hired Basile to murder Elizabeth DeCaro, nor do they challenge the mail fraud convictions related to the filing of insurance claims. Instead, their sufficiency argument is limited to the issue of whether the government proved the requisite connection between the use of the mail or facilities in interstate commerce and the murder-for-hire plot.

"Our standard of review on this issue is quite narrow." *United States v. Smith*, 104 F.3d 145, 147 (8th Cir. 1997). We view the evidence in the light most favorable to the guilty verdict, giving the government the benefit of all reasonable inferences that may be drawn from the evidence. After reviewing the evidence under these standards, we will reverse only if we conclude that no reasonable jury could find guilt beyond a reasonable doubt. We may affirm even if the evidence is entirely circumstantial. *See id.*

The relevant part of the statute under which DeCaro and Basile were convicted in their murder-for-hire scheme reads as follows:

> Whoever . . . uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign

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[6]The government also argues that several of the instructions given by the court cure any prejudice that may have resulted from the joint trial, citing *Zafiro v. United States*, 506 U.S. 534, 539 (1993). The record furnished by the parties is incomplete on this point, as copies of the relevant instructions were not included, so we do not rely on this for our holding.

> commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, . . . if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both.

18 U.S.C. § 1958(a) (1988). The government included in its addendum a copy of jury Instruction 31, which was given without objection to the legal elements. Instruction 31 states that the use of the mail or a facility in interstate commerce with intent to commit murder-for-hire can be established upon proof that "the mail or a facility in interstate commerce was used as part of the course of activity charged . . . and that one of the reasons for this use was to further the activity described." Neither defendant having raised a challenge to the legal elements set forth in the instruction, we consider whether, in keeping with the instruction, the evidence presented at trial is sufficient to prove that the interstate transactions at issue were a part of and in furtherance of the murder-for-hire scheme.

The evidence, viewed under the standards mentioned above, shows that, in collaboration with DeCaro, Basile stole the DeCaro van from the driveway of the home, drove it to southeast Missouri, and burned it, all late one night about one month before the murder. He also stole the family Blazer from the home the afternoon of the murder, stashed it in a garage his half brother Doug Meyer let him use, and cut it up for parts in the days following the murder. Additionally, Basile stole items of value from the van before he burned it,[7] and from the DeCaro home on

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[7]There was evidence at trial that some of the items Basile supposedly removed from the van, and for which DeCaro claimed and received insurance reimbursement, were found in the DeCaro home when authorities were investigating Elizabeth's murder.

the day he murdered Elizabeth. There was uncontroverted evidence that, as a direct result of the thefts, in February 1992 DeCaro filed insurance claims via the mail for the stolen van and for the items purportedly stolen from the van, and that in 1995 (after he was acquitted on state charges of murder) he filed insurance claims for the stolen Blazer and the items stolen from the home. The insurance company mailed him checks, which he cashed, for some of the claims. Interstate telephone calls and faxes also were exchanged between DeCaro and insurance company representatives regarding some of the claims. In addition, late in December 1991 an application for an insurance policy on the life of Elizabeth DeCaro in the amount of $100,000, naming Richard DeCaro as sole beneficiary, was mailed to the same insurance company that wrote the property policies. A confirmation for the policy showing an effective date of January 9, 1992, just days before DeCaro began casting about for someone to murder his wife and less than two months before the murder occurred, was mailed back to the DeCaros and was found in the DeCaros' bedroom after the murder. DeCaro used the mail to make a claim on that policy early in 1995, after his acquittal on state murder charges and his release from incarceration. This constituted the government's evidence on the use of the mail or facilities in interstate commerce. We consider the arguments of each of the defendants in turn.

A.

Basile, while acknowledging that "it can be said that [his] admitted theft of the van 'caused' DeCaro to use the mails to make insurance claims on the van and its contents," nevertheless argues that "these claims . . . were not linked by the evidence to the alleged murder contract between the two." Brief of Basile at 26. We disagree, and now summarize additional relevant evidence.

Craig Wells testified that, in late January 1992, Basile told him that DeCaro wanted Basile "to steal one of his vehicles and also that he wanted him to do a hit" on DeCaro's wife. Trial Transcript at 1-156. According to Wells, Basile "thought it was a package deal" and that DeCaro was going to pay Basile "around $15,000." *Id.* at 1-156, -157. Susan Jenkins, who was Basile's driver the night he stole the van, testified that the theft was an "insurance scam" and that, during the course of their time together that night, she heard Basile say "that he had been offered $15,000 to kill someone's wife." *Id.* at 2-17, -18. Jeffrey Niehaus, a friend of Basile, said Basile told him that the van theft "was set up through the owner and it was insurance" and that Basile referred to stealing the van as part of a "double job." *Id.* at 2-189. Basile also told Niehaus that Basile would be receiving "[o]ver $9,000" for stealing the Blazer, which Niehaus thought was an "[a]wfully lot" of money for just stealing a car. *Id.* at 2-191. Kenneth Robinson, an acquaintance of Basile, testified that Basile said that "he knew someone who had a van that he wanted to get rid of and have his wife disappear at the same time." *Id.* at 4-256. Basile's friend Dennis Williams testified that, after the murder, Basile told Williams "that he had recently done an insurance job on a van for [murder victim Elizabeth DeCaro's] husband." *Id.* at 4-250. In addition, Basile told his half brother Doug Meyer that "he was doing an insurance job" when Meyer saw the cut-up Blazer in the garage he had let Basile borrow and realized that the vehicle was implicated in the DeCaro murder. *Id.* at 4-23. There was no evidence that Basile received from DeCaro anything more than several hundred dollars before the murder. But there was evidence that DeCaro was not in good financial shape at the time of the murder, and that he would not have been able to pay Basile $15,000 in cash (or $9,000, for that matter) without the proceeds from the insurance on Elizabeth DeCaro's life.

Having reviewed the evidence according to the standards discussed above, we conclude that the insurance transactions

involving the DeCaro vehicles and items taken from the DeCaro van and home provide the required nexus between the mail or facilities in interstate commerce and the murder-for-hire to sustain Basile's conviction. It does not appear, and the government does not contend, that the insurance proceeds from the property insurance policies were to be used to pay Basile for killing Elizabeth, given that the funds were not sufficient to do so. There was a substantial lien on the van, and the value of the stolen property and the Blazer was not enough to cover the price of the murder contract. As explained below, the evidence nevertheless was sufficient to prove that DeCaro filed the property insuramct claims, at least in part, in order to cover the co-conspirators' involvement in the thefts, which themselves occurred as a part of the plot to murder Elizabeth DeCaro—in the words of Basile, "the package deal."

After Elizabeth was killed, DeCaro told Elizabeth's sister that the murderer must have been "casing the joint." Trial Transcript at 3-51. The jury reasonably could infer from that testimony that the theft of the van was staged to create a scapegoat, that is, an unknown assailant who just a month before the murder had "cased" the DeCaro home when stealing the van. As for the Blazer, the evidence was substantial that the vehicle was stolen, at least in part, to be used as Basile's "getaway" vehicle after he murdered Elizabeth DeCaro in her home .[8] Thus a reasonable jury could conclude that the thefts of the vehicles were part of the murder plot, and that the insurance claims were filed, not merely for the sake of collecting the insurance money, but to give

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[8]Basile does not "admit" in his brief that he stole the Blazer as he did the van, but the evidence presented at trial provides overwhelming proof that he did. Therefore, the Blazer's role in the murder, and the interstate transactions related to its theft, are relevant to the analysis.

DeCaro the appearance of innocence.[9] The evidence of the requisite nexus between the use Basile caused to be made of the mail or facilities in interstate commerce and the murder-for-hire plot, while circumstantial, is sufficient for a reasonable jury to find the requisite linkage between Basile, the interstate activity of his co-conspirator, and their contract for the murder of Elizabeth DeCaro.

We hold that the District Court did not abuse its discretion in denying Basile's motion for judgment of acquittal on the murder-or-hire charges.

B.

DeCaro, like Basile, acknowledges his use of the mails and facilities in interstate commerce but challenges the sufficiency of the government's proof that such use was in furtherance of the murder-for-hire plot. The analysis above concerning Basile applies with even greater force to DeCaro. Moreover, DeCaro's interstateactivity concerning the life insurance policy provides an additional interstate connection to the murder plot. The government has the benefit of the logical inference that the purchase of the policy on Elizabeth DeCaro's life was an integral part of DeCaro's scheme to have her murdered. Further, the evidence permits the inference that DeCaro, otherwise lacking the ability to pay Basile for his services, intended to pay him when DeCaro collected the $100,000 on the life insurance policy.

We hold that the District Court did not err in denying DeCaro's motion for judgment of acquittal, as a jury could find beyond a reasonable doubt the necessary connection between his use of

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[9]DeCaro did not file the claims on the Blazer and the property stolen from his home until after his release by state authorities following his acquittal on murder charges, but those transactions could be seen by a reasonable jury as a part of DeCaro's continuing effort to appear innocent of his wife's murder.

the mail or facilities in interstate commerce and the murder-for-hire scheme.

V.

The judgment of the District Court is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT

APPENDIX I

EXHIBIT I

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
U.S. COURT & CUSTOM HOUSE
1114 MARKET STREET
ST. LOUIS, MISSOURI 63101

VOICE (314) 539-3600
ABBS (800) 652-8671
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May 9, 1997

MICHAEL E. GANS
Clerk of Court

Mr. N. Scott Rosenblum Sr.
WITTNER & POGER
Suite 400
7700 Bonhomme Avenue
St. Louis, M0 63105-1924

Re: 96-2746EMSL United States vs. Richard DeCaro

Dear Counsel:

Enclosed is a copy of an order entered today at the direction of the court.

/s/ Michael E. Gans
Michael E. Gans
Clerk of Court

lcd

Enclosure(s)

cc: Thomas E. Dittmeier
James Edward Crowe
Richard DeCaro
West Publishing Company
Commerce Clearing House
Mead Data Central (Lexis)
Bureau of National Affairs
Missouri Lawyers Weekly
Tax Notes/Tax Analyst

District Court/Agency Case Number(s): 1:96CR5 SNL

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 96-2746EMSL

United States of America,
Appellee,

v.

Richard DeCaro,
Appellant.

Oder Denying The Petition for Rehearing
and Suggestion for Rehearing En Banc.

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

May 9, 1997

Order Entered at the Direction of the Court:
/s/ Micheal E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit